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SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule modifies the management-ownership diversity requirement in SBA's Small Business Investment Company (''SBIC'') Program to prohibit the ownership of more than 70% of a leveraged SBIC by any single investor or group of affiliated investors. An exception to the prohibition permits an investor that qualifies as a ''traditional investment company'', as determined by SBA, to own in excess of 70% of an SBIC. This final rule will help to ensure that each new leveraged SBIC has managers that exercise independence in managing the operations of the SBIC.

DATES: This rule is effective on December 29, 2000.

FOR FURTHER INFORMATION CONTACT: Leonard W. Fagan, at (202) 205–7583.

SUPPLEMENTARY INFORMATION: On August 14, 2000, SBA published a proposed rule (65 FR 49511) to revise the management-ownership diversity regulation in SBA's Small Business Investment Company (''SBIC'') Program. Under the proposal, no single investor or group of affiliated investors would be permitted to own or control more than 70% of a leveraged SBIC. SBA also proposed an exception to allow an entity qualifying as a ''traditional investment company'' to own and control more than 70% of an SBIC. SBA solicited comments on the proposed rule and specifically sought comment as to whether the proposed exception should be expanded to cover other categories of investors.

SBA received no comments on the proposed rule and, accordingly, is finalizing it without substantive change. SBA has made certain minor non-substantive edits to the proposed version of section 107.150 (''Management-ownership diversity requirement''), including relettering of the paragraphs, in order to conform to drafting requirements of the **Federal Register**.

The proposed rule summarized the changes in the management-ownership diversity regulation since its adoption in 1994. That summary and SBA's explanation of the proposed changes to the regulation, all of which have been implemented in this final rule, are repeated here as a convenience to the reader.

In 1994, SBA adopted a regulation requiring that all small business investment companies (''SBICs'') intending to issue participating securities have independence, or ''diversity'', between the management and the ownership of the company. 59 Fed. Reg. 16918 (April 8, 1994). This requirement of independence was designed to prevent the types of abuses that SBA had observed in SBICs owned and operated by a single individual or group of individuals. The abuses, which included conflict of interest transactions, misapplication of funds, and other types of self-dealing activities, had resulted in significant losses to SBA.

To satisfy the 1994 management-ownership diversity regulation, at least 30% of the capital of the SBIC had to be owned by investors who were neither Associates nor Affiliates of any Associates of the SBIC (as such terms were defined in 13 CFR Parts 107 and 121). In other words, at least 30% of the capital of the SBIC had to be owned by investors who were not part of the SBIC's management team and did not control the SBIC's management team. In general, three such ''diversity investors'' were required, but a single diversity investor would suffice if the investor was an entity that met certain net worth and regulatory oversight requirements.

The 1994 regulation permitted an SBIC with a parent company (*i.e.,* an investor owning greater than 50% of the SBIC) to treat the parent company's investors as if they were direct investors in the SBIC for purposes of demonstrating diversity. SBA would, in effect, ''look-through'' to the investors in the parent company for the desired independence from, and oversight of, the management of the SBIC.

In 1996, SBA extended the management-ownership diversity requirement to all new SBICs intending to use SBA financial assistance, or ''leverage'', whether the leverage was in the form of participating securities or debentures. 61 FR 3177 (January 31, 1996). SBA also replaced the automatic look-through provision described above with a discretionary look-through: SBA, in the exercise of its discretion, could look through to the parent's investors, but such treatment was no longer automatic. This change was in response to the increasing complexity SBA was encountering in ''drop-down'' SBICs (SBIC subsidiaries of larger companies), where the combination of multi-tiered organizational structures and other factors had led SBA to conclude that the necessary oversight by independent owners might not be present. SBA could still look through to the parent company's investors to find diversity, but would do so only if SBA believed that the result was consistent with the intent of the diversity regulation.

Later in 1996, Congress expressed its support for management-ownership diversity by enacting a statutory provision requiring SBA to ensure that the management of all new SBICs ''is sufficiently diversified from and unaffiliated with the ownership of the licensee in a manner that ensures independence and objectivity in the financial management and oversight of the investments and operations of the licensee.'' 15 U.S.C. 682(c); Public Law 104–208, section 208(c)(3) (September 30, 1996). SBA subsequently made minor changes to strengthen the management-ownership diversity regulation. These changes included requiring (1) that the diversity investors be unrelated to each other, (2) that each diversity investor have a significant ownership interest in dollar and percentage terms, and (3) that an SBIC's diversity be evidenced in its paid-in capital, not just its unfunded commitments. 63 FR 5859 (February 5, 1998).

As SBA stated in the proposed rule published on August 14, 2000, SBA believes that, overall, the management-ownership diversity regulation has been successful in encouraging the presence of investors who are truly independent of management. However, SBA has had

concerns as to whether independence was assured when a single investor, unrelated to the management team, owned substantially all of an SBIC.

To provide diversity under the regulation as in effect since 1994, the non-management interest was required to be at least 30% of the SBIC, but could have been as much as 100% and could have been owned by a single entity. This single super-majority investor could provide the required diversity from management as long as the investor did not control, was not controlled by, and was not under common control with, the managers of the SBIC. Thus, for diversity to be provided by a single super-majority investor who was otherwise unrelated to the SBIC's management team, SBA had to conclude that the investor did not control the SBIC's managers by virtue of the size of the investor's ownership interest in the SBIC.

As SBA explained in the proposed rule, SBA believes that the degree of influence that can be exerted by a super-majority investor may significantly reduce the management team's ability to act independently and objectively. The larger the size of an investor's ownership interest, the greater the investor's potential influence over the activities of the SBIC. This is true even if the investor is a passive limited partner.

At some ownership level, an investor's power to influence effectively becomes the power to control the managers of the SBIC, and the management team can no longer be said to have the ability to act independently. SBA's experience in administering the management-ownership diversity regulation persuaded it that it is difficult to objectively establish when that ownership level is reached. However, if the super-majority investor is limited to owning not more than 70%, and there is a 30% diversity investor that is independent of both the management and the super-majority investor, the super-majority investor's degree of potential influence on management becomes acceptable.

Accordingly, SBA proposed to amend the management-ownership diversity regulation, section 107.150, to prohibit ownership of more than 70% of a leveraged SBIC by a single investor or group of affiliated investors.

SBA recognized that there might be categories of investors who could be permitted to own in excess of 70% of an SBIC without destroying the SBIC's management-ownership diversity. SBA proposed an exception for one such category—the traditional investment company—a professionally managed firm organized exclusively to pool capital from more than one source for the purpose of investing in businesses that are expected to generate substantial returns to the firm's investors.

A subsidiary SBIC of such a traditional investment company can offer meaningful management-ownership diversity even if the investment company owns substantially all of the SBIC. This is true for a number of reasons. First, a traditional investment company has managers who are largely unrelated to and unaffiliated with the investors in the firm. These independent managers typically also serve as the managers of the subsidiary SBIC. Second, the managers of a traditional investment company and its subsidiary SBIC are properly authorized and motivated to make investments that, in their independent judgment, are likely to produce significant returns to all investors in the investment company and in the SBIC. Although the managers act independently of the investors in the firm, they are directly accountable to them. Most importantly, a traditional investment company benefits from the use of a subsidiary SBIC only if the SBIC makes profitable investments.

As SBA discussed in the proposed rule, SBICs with other types of super-majority investors do not necessarily present the same degree of management independence and objectivity, plus investor oversight. The objectives of other super-majority investors may include something other than profit maximization at the SBIC level. Large operating companies, for example, may profit from the use of a subsidiary SBIC other than through the financial performance of the SBIC. The SBIC might make strategic investments to support or otherwise benefit the non-investing activities of the operating company, rather than investments intended solely to contribute to the profitability of the SBIC. This would defeat one of the underlying purposes of management-ownership diversity—the protection of SBA's financial interest in the SBIC.

Under the final rule, a traditional investment company is permitted to own and control more than 70% of an SBIC.

In addition, the final rule adopts without change the proposed revisions to the 30% test (new paragraph (c) of section 107.150) in the management-ownership diversity regulation. Under those revisions, (1) publicly-traded licensees can no longer automatically satisfy the 30% test, (2) two new categories are added to the list of entities permitted to serve as the sole (30%) diversity investor in an SBIC, and (3) the scope of one of the other categories of entities on that list is clarified.

The first of those revisions is accomplished by deleting paragraph (a)(2) of the old diversity regulation. The second revision, the addition of two new categories of entities permitted to serve as the sole diversity investor, appears in new paragraphs (c)(1)(ii) and (iii) of section 107.150. The new categories are Institutional Investors that (1) are listed on the New York Stock Exchange or (2) are publicly-traded and meet the minimum numerical and corporate governance listing standards of that Exchange. Companies satisfying either of these listing standards have sufficient size and public oversight and visibility to justify treating them the same as regulated companies for purposes of the diversity regulation. SBA expects this change to resolve any uncertainty as to the requirements for a publicly-traded company to be considered acceptable to SBA as a single diversity investor under the regulation.

The third revision referred to above appears in new paragraph (c)(1)(i) of section 107.150. It makes clear that an entity seeking to qualify as the sole diversity investor because it is subject to government oversight or regulation must have its overall activities both regulated and periodically examined by a governmental authority satisfactory to SBA. U.S. federal and state bank regulators or insurance commissions are examples of satisfactory governmental authorities for this purpose. Regulation of an entity's health and safety activities by the Office of Safety and Health Administration (OSHA), on the other hand, would not be acceptable for this purpose.

An existing SBIC that is not currently required to have diversity will become subject to the new management-ownership diversity regulation only if (1) the SBIC applies for approval of a change of control and SBA requires diversity as a condition of its approval, or (2) the SBIC was not licensed with the expectation that it would issue leverage but it now seeks approval to do so.

As was proposed, SBA also is amending section 107.440(c) to clarify that SBA's approval of a change of control of an SBIC may be conditioned upon the licensee's compliance with the diversity regulation, as well as minimum capital requirements, then in effect. This has been SBA's practice since the diversity regulation was first adopted.

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35).

This final rule is not a significant regulatory action for purposes of Executive Order 12866 and therefore was not reviewed by the Office of Management and Budget.

SBA has determined that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. The purpose of the final rule is to redefine and clarify the concept of management-ownership diversity in an SBIC. The final rule will not apply to the approximately 365 companies currently licensed as SBICs, except in the insignificant number of cases where a transfer of control of the licensee occurs or where an SBIC that was not licensed with the expectation that it would issue leverage applies for such approval.

For purposes of Executive Order 12988, SBA has determined that this final rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this final rule will have no federalism implications.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule contains no new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated above, the SBA amends 13 CFR part 107 as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 continues to read as follows:

Authority: 15 U.S.C. 681 *et seq.*, 683, 687(c), 6887b, 687d, 687g and 687m.

2. Revise § 107.150 to read as follows:

§ 107.150 Management-ownership diversity requirement.

(a) *Diversity requirement.* You must satisfy the requirements in paragraphs (b), (c) and (d) of this section:

(1) In order to obtain an SBIC license (unless you do not plan to obtain Leverage),

(2) If at the time you were licensed you did not plan to obtain Leverage, but you now wish to be eligible for Leverage, or

(3) If SBA so requires as a condition of approval of your transfer of Control under § 107.440.

(b) *Percentage ownership requirement.* (1) Except as provided in paragraph (b)(2) of this section, no Person or group of Persons who are Affiliates of one another may own or control, directly or indirectly, more than 70 percent of your Regulatory Capital or your Leverageable Capital.

(2) *Exception.* An investor that is a traditional investment company, as determined by SBA, may own and control more than 70 percent of your Regulatory Capital and your Leverageable Capital. For purposes of this section, a traditional investment company must be a professionally managed firm organized exclusively to pool capital from more than one source for the purpose of investing in businesses that are expected to generate substantial returns to the firm's investors. In determining whether a firm is a traditional investment company for purposes of this section, SBA will also consider:

(i) Whether the managers of the firm are unrelated to and unaffiliated with the investors in the firm;

(ii) Whether the managers of the firm are authorized and motivated to make investments that, in their independent judgment, are likely to produce significant returns to all investors in the firm;

(iii) Whether the firm benefits from the use of the SBIC only through the financial performance of the SBIC; and

(iv) Other related factors.

(c) *Non-affiliation requirement.* (1) *General rule.* At least 30 percent of your Regulatory Capital and Leverageable Capital must be owned and controlled by three Persons unaffiliated with your management and unaffiliated with each other, and whose investments are significant in dollar and percentage terms as determined by SBA. Such Persons must not be your Associates (except for their status as your shareholders, limited partners, or members) and must not Control, be Controlled by, or be under Common Control with any of your Associates. A single ''acceptable'' Institutional Investor may be substituted for two or three of the three Persons who are otherwise required under this paragraph. The following Institutional Investors are ''acceptable'' for this purpose:

(i) Entities whose overall activities are regulated and periodically examined by state, Federal or other governmental authorities satisfactory to SBA;

(ii) Entities listed on the New York Stock Exchange;

(iii) Entities that are publicly-traded and that meet both the minimum numerical listing standards and the corporate governance listing standards of the New York Stock Exchange;

(iv) Public or private employee pension funds;

(v) Trusts, foundations, or endowments, but only if exempt from Federal income taxation; and

(vi) Other Institutional Investors satisfactory to SBA.

(2) *Look-through for traditional investment company investors.* SBA, in its sole discretion, may consider the requirement in paragraph (c)(1) of this section to be satisfied if at least 30 percent of your Regulatory Capital and Leverageable Capital is owned and controlled indirectly, through a traditional investment company, by Persons unaffiliated with your management.

(d) *Voting requirement.* (1) Except as provided in paragraph (d)(2) of this section, the investors required for you to satisfy diversity may not delegate their voting rights to any Person who is your Associate, or who Controls, is Controlled by, or is under Common Control with any of your Associates, without prior SBA approval.

(2) *Exception.* Paragraph (d)(1) of this section does not apply to investors in publicly-traded Licensees, to proxies given to vote in accordance with specific instructions for single specified meetings, or to any delegation of voting rights to a Person who is neither a diversity investor in the Licensee nor affiliated with management of the Licensee.

(e) *Requirement to maintain diversity.* If you were required to have management-ownership diversity at any time, you must maintain such diversity while you have outstanding Leverage or Earmarked Assets. To maintain management-ownership diversity, you may continue to satisfy the diversity requirement as in effect at the time it was first applicable to you or you may satisfy the management-ownership diversity requirement as currently in effect. If, at any time, you no longer have the required management-ownership diversity, you must:

(1) Notify SBA within 10 days; and

(2) Re-establish diversity within six months. For the consequences of failure to re-establish diversity, see §§ 107.1810(g) and 107.1820(f).

3. In § 107.440, revise paragraph (c) to read as follows:

§ 107.440 Standards governing prior SBA approval for a proposed transfer of Control.

* * * * *

(c) Require compliance with any other conditions set by SBA, including compliance with the requirements for minimum capital and management-ownership diversity as in effect at such time for new license applicants.

Dated: November 16, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–30415 Filed 11–28–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. 99F–1912]

Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ultraviolet (UV) irradiation to reduce human pathogens and other microorganisms in juice products. This action is in response to a food additive petition filed by California Day-Fresh Foods, Inc.

DATES: This rule is effective November 29, 2000. Submit written objections and requests for a hearing by December 29, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: William J. Trotter, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3088.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of June 25, 1999 (64 FR 34258), FDA announced that a food additive petition (FAP 9M4676) had been filed by California Day-Fresh Foods, Inc., 533 West Foothill Blvd., Glendora, CA 91741. The petitioner proposed that the food additive regulations in part 179 *Irradiation in the Production, Processing and Handling of Food* (21 CFR part 179) be amended to provide for the safe use of UV light to reduce human pathogens and other microorganisms in juice products.

II. Safety Evaluation

Under section 201(s) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s)), a source of radiation used to treat food is defined as a food additive. The additive is not, literally, added to food. Instead, a source of radiation is used to process or treat food such that, analogous to other food processes, its use can affect the characteristics of the food. In the subject petition, the intended technical effect is a change in the microbial load of the food, specifically, a reduction of human pathogens and other microorganisms in juice products.

A. Toxicology

FDA has evaluated the safety of the use of UV irradiation to reduce human pathogens and other microorganisms in juices. This safety assessment was based on the current understanding of the effects of UV irradiation on the major chemical components of food. Having evaluated the data in the petition and other relevant material in the agency's files, the agency finds that any photochemical changes that may occur as a result of the UV irradiation are of no toxicological significance (Ref. 1).

B. Microbiology

The petitioner submitted data demonstrating the reduction of specific pathogens (*Escherichia coli* O157:H7, *Listeria monocytogenes*, and *Salmonella*) inoculated into four types of juices (orange, apple, carrot, and garden vegetable). These four juice varieties are representative of the types of juice that are consumed by the U.S. population and that could be treated with UV irradiation (Ref. 2). After UV irradiation, there were significant reductions in pathogens. FDA concludes that the proposed use is effective in reducing human pathogens in juices and that treated juices will be at least as safe as untreated juices currently on the market (Ref. 3). However, the submitted microbiological data do not constitute the type of validation studies necessary to demonstrate the achievement of specific performance standards, *e.g.* 5-log reductions, for human pathogen control programs (Ref. 3). Therefore, users of this UV treatment who are subject to certain performance standards will need to establish that this treatment meets their required level of human pathogen reduction.

C. Specifications for Use

The petitioned UV radiation is produced by low pressure mercury lamps, which emit more than 90 percent of their light at 253.7 nanometers (nm) (2,537 Angstroms); juice being treated passes through a transparent tube in which the juice is subjected to UV irradiation. Because most juices strongly absorb UV radiation, most of the UV radiation would be absorbed by the juice at the wall of the tube near the source of the UV irradiation. However, the amount of UV irradiation that would reach juice in the middle of the tube would be insufficient to reduce significantly human pathogens. Therefore, the petitioner proposed that the juices flow under turbulent conditions that produce eddies and swirls in the juice to ensure that as much juice as possible will reach the wall of the UV transparent tube where the juice would be exposed to UV irradiation. This would help to reduce human pathogens and other microorganisms throughout the juice. The conditions for turbulent flow are described mathematically by the unitless Reynolds number (Re):

ER29NO00.001

where:
D is the tube diameter,
u is fluid velocity,
p is fluid density, and
μ is fluid viscosity.

To ensure that sufficient turbulent flow is achieved, the petitioner has requested that a limit of a Reynolds number of no less than 2,200 be incorporated into the regulation. FDA concurs with this specification (Ref. 4).

The amount of UV irradiation necessary for human pathogen reduction will depend on various factors, such as the type of juice, the initial microbial load, and the design of the irradiation system (*e.g.,* flow rate, number of lamps, and time exposed to irradiation). Therefore, FDA is not specifying a minimum or maximum dose by regulation, but concludes that this should be achieved for individual usage situations in a manner consistent with good manufacturing practice (Ref. 5). FDA expects that the maximum dose applied to the juice will be economically self-limiting due to the costs associated with UV irradiation. Additionally, the levels of UV irradiation applied to the juice will be limited by the possible alterations in organoleptic characteristics of the juice (*i.e.,* changes in taste or color) after UV irradiation, changes that may result in decreased consumer acceptance. Thus,

juice processors will also limit the maximum applied dose of UV irradiation to avoid production of a product not acceptable to consumers (Ref. 5).

Based on the data and studies submitted in the petition and other information in the agency's files, FDA concludes that the proposed use of UV irradiation of juice products is safe, that the irradiation will achieve its intended technical effect, and therefore, that the regulations in § 179.39 should be amended as set forth below.

D. Other Changes to § 179.39

FDA is also making an editorial change to the existing regulation to describe more accurately the approved emission sources and to remove an unnecessary and confusing description. This change does not affect the nature or properties of permitted sources. Currently, § 179.39(a) stipulates that ''The radiation sources consist of ultraviolet emission tubes designed to emit wavelengths within the range of 2200–3000 Angstrom units with 90 percent of the emission being the wavelength 2537 Angstrom units.'' The stipulation that 90 percent of the emission is at 253.7 nm (2,537 Angstroms) is sufficient to describe the sources as low pressure mercury lamps. Furthermore, since a small percentage of the emission from these tubes is outside of the 220.0 to 300.0 nm (2,200 to 3,000 Angstroms) range, this restriction is factually inaccurate. Therefore, FDA is removing the restriction of the wavelength range in § 179.39(a) and in the table in paragraph (b) under the ''Limitations column,'' and is instead specifying that the source of the irradiation to be low pressure mercury lamps.

III. Public Disclosure

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the Filing Notice for FAP 9M4676 (June 25, 1999, 64 FR 34258). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Objections

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by December 29, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. FDA Memorandum, A. Mattia to W. Trotter, November 2, 1999.
2. FDA Memorandum, E. Jensen to W. Trotter, September 6, 2000.
3. FDA Memorandum, R. Merker to W. Trotter, January 26, 2000.
4. FDA Memorandum, E. Jensen to W. Trotter, October 27, 1999.
5. FDA Memorandum, E. Jensen to W. Trotter, October 27, 2000.

List of Subjects in 21 CFR Part 179

Food additives, Food labeling, Food packaging, Radiation protection, Reporting and recordkeeping requirements, Signs and symbols.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 179 is amended as follows:

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD

1. The authority citation for 21 CFR part 179 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 348, 373, 374.

2. Section 179.39 is amended by revising paragraph (a) and by revising the table in paragraph (b) to read as follows:

§ 179.39 Ultraviolet radiation for the processing and treatment of food.

* * * * *

(a) The radiation sources consist of low pressure mercury lamps emitting 90 percent of the emission at a wavelength of 253.7 nanometers (2,537 Angstroms).

(b) * * *

Irradiated food	Limitations	Use
Food and food products	Without ozone production: high fat-content food irradiated in vacuum or in an inert atmosphere; intensity of radiation, 1 W (of 2,537 A. radiation) per 5 to 10 ft.^{2}	Surface microorganism control.

Irradiated food	Limitations	Use
Potable water	Without ozone production; coefficient of absorption, 0.19 per cm or less; flow rate, 100 gal/h per watt of 2,537 A. radiation; water depth, 1 cm or less; lamp-operating temperature, 36 to 46 °C.	Sterilization of water used in food production.
Juice products	Turbulent flow through tubes with a minimum Reynolds number of 2,200.	Reduction of human pathogens and other microorganisms.

Dated: November 14, 2000.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–30453 Filed 11–28–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11–00–016]

RIN 2115–AE46

Special Local Regulations: San Diego Christmas Boat Parade of Lights

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements 33 CFR 100.1101, Southern California annual marine events, for the San Diego Christmas Boat Parade of Lights. The event will consist of private vessels approximately 10 to 60 feet in length with Christmas lights formed in a parade through the San Diego Harbor. These regulations will be effective on that portion of San Diego Harbor, from the northern portion of the main channel from Seaport Village to the Shelter Island Yacht Basin. Notice of Implementation of 33 CFR 100.1101 is necessary to control vessel traffic in the regulated areas during the event to ensure the safety of participants and spectators.

Pursuant to 33 CFR 100.1101(b)(3), Commanding Officer, Coast Guard Activities San Diego, is designated Patrol Commander for this event; he has the authority to delegate this responsibility to any commissioned, warrant, or petty officer of the Coast Guard.

EFFECTIVE DATES: This section is effective on December 10, 2000 from 2:00 p.m. (PST) until 10:00 p.m. (PST) and on December 17, 2000 from 5:00 p.m. until 10:00 p.m. (PST). If the event concludes prior to the scheduled termination date and/or time, the Coast Guard will cease enforcement of this section and will announce that fact via Broadcast Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: Petty Officer Nicole Lavorgna, U.S. Coast Guard MSO San Diego, San Diego, California; Telephone: (619) 683–6495.

Discussion of Implementation. These Special Local Regulations permit Coast Guard control of vessel traffic in order to ensure the safety of spectator and participant vessels. In accordance with the regulations in 33 CFR 100.1101, no persons or vessels shall block, anchor, or loiter in the regulated area; nor shall any person or vessel transit through the regulated area, or otherwise impede the transit of participant or official patrol vessels in the regulated area, unless cleared for such entry by or through an official patrol vessel acting on behalf of the Patrol Commander.

Dated: November 21, 2000.

C.D. Wurster,

U.S. Coast Guard, Commander, Eleventh Coast Guard District, Acting.

[FR Doc. 00–30446 Filed 11–28–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–00–026]

RIN 2115–AE47

Drawbridge Operating Regulation; Neches River, TX

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing this rule as a matter of information to the public. The Kansas City Southern Lift Bridge across the Neches River, mile 19.5, in Beaumont, TX is currently controlled from a remote location. The owner of the bridge, The Kansas City Southern Railway Company operates the bridge from their dispatch office in Shreveport, LA. This rule provides the public with a complete description of the operation of this bridge.

DATES: This rule becomes effective on November 29, 2000.

ADDRESSES: Documents referred to in this rule are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. Commander (ob) maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM.

An NPRM is not necessary because this rule makes no substantive changes to the operation of the Kansas City Southern Lift Bridge, but it does describe the full remote operation of the bridge for the benefit of the public.

Background and Purpose

The Kansas City Southern Lift Bridge across the Neches River, mile 19.5, in Beaumont, TX is a remotely operated railroad bridge that opens to navigation on demand. The owners of the bridge, The Kansas City Southern Railway Company operates the bridge remotely from Shreveport, LA and has installed a sound device that transmits the vessel signals for an opening to the bridge operator. Then, through this same device, the bridge operator can respond whether the bridge can be opened at that time or not. No changes will be made to how the bridge currently operates.

For the benefit of the public, the Coast Guard is adding a description of the full operation of this remotely operated bridge to 33 CFR 117 subpart b.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order (E.O.) 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include (1) small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and (2) governmental jurisdictions with populations of less than 50,000.

Because the Coast Guard expects there to be no impact from this rule, it certifies, under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard expects no impact from this rule. There will be no changes made to the operation of the bridge.

Collection of Information

This final rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this final rule under E.O. 13132 and have determined that this final rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This final rule would not impose an unfunded mandate.

Taking of Private Property

This final rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this final rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this final rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lC, this final rule is categorically excluded from further environmental documentation. This final rule will not change the operation of the bridge. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 105 Stat. 5039.

2. In § 117.971, the existing text is re-designated as paragraph (b) and a new paragraph (a) is added to read as follows:

§ 117.971 Neches River

(a) The draw of the Kansas City Southern automated bridge, mile 19.5, at Beaumont, is not constantly manned and is operated from a remote site in Shreveport, Louisiana. The bridge is normally maintained in the closed to navigation position, providing 13 feet of vertical clearance above mean high tide. This bridge will open on signal.

(1) Mariners may request a bridge opening at anytime via one of the following methods:

(i) Telephone at 1–877–829–6295;

(ii) Marine radio on VHF–FM Channel 16; or

(iii) Proper sound signal as prescribed in § 117.15.

(2) When signaling by sound, if return sound signal is not sent from the remote bridge operator, in compliance with § 117.15, contact the remote operator via telephone or marine radio.

(3) An audible warning siren will sound when the bridge is in motion. Video cameras will constantly monitor the waterway near and under the draw. Once a vessel has passed through the bridge, the draw will lower, provided the infrared ''under bridge'' presence detector and video cameras reveal nothing under the draw.

* * * * *

Dated: November 13, 2000.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 00–30391 Filed 11–28–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–00–027]

Drawbridge Operating Regulation; Sabine Lake, Texas

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in 33 CFR 117.979 governing the operation of the State Route 82, swing span bridge across Sabine Lake, mile 10.0 at Port Arthur, Texas. This deviation allows the State of Texas, Department of Transportation to close the bridge to navigation from 7 a.m. on December 1, 2000 through 5 p.m. on December 15, 2000. Presently, the draw is required to open on signal except that from 9 p.m. to 5 a.m., the draw shall open on signal if at least six hours notice is given to the Maintenance Construction Supervisor or the Maintenance Foreman at Port Arthur. This temporary deviation is issued to allow for replacement of the operator house and to perform electrical and mechanical maintenance.

DATES: This deviation is effective from 7 a.m. on December 1, 2000 through 5 p.m. on December 15, 2000.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (ob), 501 Magazine Street, New Orleans, Louisiana, 70130–3396. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The State Route 82, swing span bridge across Sabine Lake, mile 10.2, near Port Arthur, Texas, has a vertical clearance of 9 feet above high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists primarily of fishing vessels, and recreational craft, although the bridge is occasionally transited by small tugs with tows, transporting sand, gravel and marine shells. The State of Texas, Department of Transportation requested a temporary deviation from the normal operation of the drawbridge in order to accommodate the maintenance work, involving construction of a new operator house and replacement of the submarine power supply cable and other electrical and mechanical repairs. This maintenance is necessary for the continued operation of the bridge. An alternate route via the Gulf Intracoastal Waterway is available.

This deviation allows the draw of the State Route 82 Bridge swing span drawbridge across Sabine Lake, mile 10.0, to remain closed to navigation from 7 a.m. on December 1, 2000 through 5 p.m. on December 15, 2000.

Dated: November 14, 2000.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 00–30392 Filed 11–28–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[NH–45–7172a; A–1–FRL–6906–2]

Approval and Promulgation of Air Quality Implementation Plans and Designations of Areas for Air Quality Planning Purposes; State of New Hampshire; Revision to the Carbon Monoxide State Implementation Plan, City of Nashua; Carbon Monoxide Redesignation Request, Maintenance Plan, Transportation Conformity Budget, and Emissions Inventory for the City of Nashua; Carbon Monoxide Redesignation Request, Maintenance Plan, Transportation Conformity Budget, and Emissions Inventory for the City of Manchester

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is redesignating the Nashua, New Hampshire nonattainment area to attainment for the carbon monoxide (CO) air quality standard and approving a maintenance plan that will insure that the Nashua area remains in attainment. The EPA is also redesignating the Manchester, New Hampshire nonattainment area to attainment for the CO air quality standard and approving a maintenance plan that will insure that the Manchester area remains in attainment. Under the Clean Air Act, as amended in 1990 (the CAA), designations can be revised if sufficient data are available to warrant such revisions and the request to redesignate shows that all of the requirements of section 107(d)(E)(3) of the CAA have been met. EPA is approving the New Hampshire maintenance plans and other redesignation submittals because they meet the maintenance plan and redesignation requirements, and will ensure that the two areas remains in attainment. The approved maintenance plans will become a federally enforceable part of the New Hampshire State Implementation Plan (SIP). In this action, EPA is also approving the New Hampshire 1990 baseline emission inventories for both of these areas, transportation conformity budgets for both areas and a revision to the motor vehicle inspection and maintenance (I/M) SIP approved for the Nashua area.

DATES: This direct final rule is effective January 29, 2001 without further notice, unless EPA receives adverse comment by December 29, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, New England office, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State's redesignation requests and other information supporting this action and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, New England office, One Congress Street, 11th floor, Boston, MA and Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Butensky, Environmental Planner, Air Quality Planning Unit of the Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, New England office, One Congress Street, Boston, MA 02114–2023, (617) 918–1665 or at butensky.jeff@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Summary of SIP Revisions

Why Is EPA Taking This Action?

On February 2, 1999, the State of New Hampshire submitted formal CO redesignation requests for the City of Manchester and the City of Nashua. These two submittals also included maintenance plans, 1990 CO emission inventories, and transportation conformity budgets for both cities. Both of these submittals are being approved in today's action. New Hampshire also submitted a revision to the CO attainment SIP for Nashua. This submittal, dated February 1, 1999, requests to replace the previously implemented CO I/M program in the Nashua area with controls consisting of the existing federal Tier 1 emission

standards for new vehicles [1] and the federal reformulated gasoline program (RFG).[2] This request is also being approved in today's action. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Why Are We Concerned About Carbon Monoxide?

Inhaling high levels of CO inhibits the blood's capacity to carry oxygen to organs and tissues. Persons with heart disease, children, and individuals with respiratory diseases are particularly sensitive to CO. Effects of CO on healthy adults include impaired exercise capacity, visual perception, manual dexterity, learning functions, and ability to perform complex tasks. As a result of these potential health impacts, EPA developed National Ambient Air Quality Standards (NAAQS), or the level at which CO concentrations in the ambient air become unhealthful.[3] In response to the NAAQS and pursuant to CAA requirements, States have developed programs to reduce CO to levels that are below the NAAQS.

How Did EPA Establish Manchester and Nashua as Nonattainment for Carbon Monoxide?

The City of Manchester was designated nonattainment on March 31, 1978 (43 FR 8962) and the City of Nashua was designated nonattainment on April 11, 1980 (45 FR 24869). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Pursuant to Section 107(d)(1)(C) of the CAA, the City of Manchester and the City of Nashua retained their designations of nonattainment for carbon monoxide by operation of law. See (56 FR 56694 (November 6, 1991)). At the same time, both areas were classified as ''not classified'' since ambient monitoring data for both areas was showing attainment of the CO NAAQS.

Because these areas were not classified under the CAA, it is section 172 of the CAA that sets forth the applicable requirements for these nonattainment areas. The 1990 CAA required such areas to achieve the standard by November 15, 1995, and both Manchester and Nashua have fulfilled this requirement.

On February 1, 1999, the State of New Hampshire sent EPA a CO attainment plan revision request for Nashua, and on February 2, 1999, submitted a redesignation request, maintenance plan, requisite emission inventory, and conformity budgets for the City of Nashua. Similarly, on February 2, 1999, New Hampshire submitted a redesignation request, maintenance plan, requisite emission inventory, and conformity budget for the City of Manchester. All of these components are being approved today and are discussed in detail in this document. New Hampshire submitted evidence that the State held public hearings on January 7, 1999, for the Nashua CO attainment plan revision, the Nashua CO redesignation request and related components, and the Manchester CO redesignation request and related components.

Why Did New Hampshire Initiate an Inspection and Maintenance Program in the Nashua Area?

In 1985, the State of New Hampshire submitted several SIP revisions forming the components the CO attainment plan that included a basic I/M program for CO. This basic CO I/M program was implemented in Nashua and eleven surrounding towns [4] starting in 1987. The program was designed to cease operating on January 1, 1995 and the State legislature allowed it to cease at that time.[5] The Nashua area came into attainment with the CO NAAQS in 1987, and has continued to maintain attainment with the CO standard since then.

Prior to redesignation, New Hampshire cannot remove the Nashua CO I/M program from its SIP unless it makes a demonstration under CAA section 193, the so-called savings clause, that the State is replacing that program with another that achieves equivalent or greater emissions reductions in the nonattainment area. Therefore, in addition to requesting that EPA redesignate the Nashua area to attainment, the State also submitted a request to replace the Nashua CO I/M program with controls consisting of the Tier 1 emission standards and the reformulated gasoline program (RFG). These programs became effective in New Hampshire in 1994 and 1995, respectively.

The New Hampshire Department of Environmental Services (NHDES) conducted an analysis that provides evidence that the Tier 1 emission standards and the RFG program are providing equal or more emission reductions that the Nashua CO I/M program. The calculations show that the replacement package of measures (*i.e.* Tier 1 standards and RFG) provides approximately 10 tons per day more emission reductions than the basic I/M program for CO. Therefore, New Hampshire demonstrated that the replacement programs provided more of a benefit than the Nashua CO I/M program. Based on this conclusion, EPA is approving New Hampshire's request to replace the I/M program with the aforementioned replacement controls as a prerequisite for redesignating Nashua to attainment for CO. For more information, please see the Technical Support Document.

What Are the Related Clean Air Act Requirements, and How Does New Hampshire Meet Them?

Section 107(d)(3)(E) of the 1990 Clean Air Act Amendments provides five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS;

2. The area must have a fully approved SIP under section 110(k) of CAA;

3. The air quality improvement must be permanent and enforceable;

4. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA;

5. The area must meet all applicable requirements under section 110 and Part D of the CAA.

The New Hampshire redesignation request meets the five requirements of section 107(d)(3)(E) as discussed in the following:

1. *Attainment of the CO NAAQS*— New Hampshire has CO air monitoring data that provides evidence that both Manchester and Nashua have met the CO NAAQS. To attain the CO NAAQS, an area must have complete quality-assured data showing no more than one exceedance of the NAAQS over at least two consecutive years. The ambient air CO monitoring data relied upon by New Hampshire in its redesignation request shows no violations of the CO NAAQS since 1987 in Nashua and since 1988 in Manchester. In addition, the state

[1] Tier 1 motor vehicle standards have been implemented beginning with model year 1994.

[2] Reformulated gasoline has been sold since 1995 in the four southernmost counties of New Hampshire (*i.e.*, Merrimack, Hillsborough, Rockingham, and Strafford).

[3] EPA defines the NAAQS as nine parts per million averaged over an eight-hour period, and this threshold cannot be exceeded more than once a year or an area would be violating the NAAQS.

[4] Nashua, Hollis, Merrimack, Litchfield, Hudson, Milford, Amherst, Pelham, Londonderry, Derry, Windham, and Salem.

[5] House Bill 674, approved by the New Hampshire State Legislature in 1993, terminated the Motor Vehicle Inspection Program, effective January 1, 1995.

submitted modeling results using EPA's MOBILE5b emission model with specific inputs described in the submittal and New Hampshire also ran the CAL3QHC (version 2.0) dispersion model for the key traffic intersections addressed in the CO SIP. These modeling runs show no violations of the CO NAAQS throughout the maintenance period (through 2010 and 2020). New Hampshire also has committed to continue to monitor CO in both Manchester and Nashua.

2. *Fully Approved SIP*—New Hampshire's CO SIPs are fully approved by EPA as meeting all the requirements of Section 110 of the Act, including the requirement in Section 110(a)(2)(I) to meet all the applicable requirements of Part D (relating to nonattainment), which were due prior to the date of New Hampshire's redesignation request. On February 26, 1985, March 1, 1985, September 12, 1985, and December 3, 1985, New Hampshire submitted documents that, taken together, constitute the CO attainment plan for Nashua, including a CO I/M program for the Nashua area. In addition to this I/M program, the State implemented several intersection and traffic flow measures in Nashua to reach attainment. On August 4, 1986, EPA issued a conditional approval of the States' I/M plan for the Nashua area (51 FR 27878). The I/M plan, which was a necessary component of the Nashua attainment plan, was subsequently approved on June 12, 1987 (52 FR 22503), resulting in EPA's final approval of the attainment plan SIP on August 25, 1988 (53 FR 32391).

On October 5, 1982, and December 20, 1982, the State submitted an attainment plan for Manchester that EPA subsequently approved on June 27, 1983 (48 FR 29479). To reach attainment, the state implemented signal adjustments and the addition of turn lanes in the downtown Manchester area.

Before EPA may redesignate the New Hampshire areas to attainment, the SIP must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it is subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as not classifiable. Therefore, to be redesignated to attainment, the State must meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176. Additionally, the 1990 CAA required that CO nonattainment areas such as Manchester and Nashua to achieve other specific new requirements. Each of these requirements are discussed in greater detail below.

Reasonably Available Control Measures: The General Preamble for the implementation of Title One of the Clean Air Act Amendments of 1990 (57 FR 13498 (April 16, 1992)) explains that section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all Reasonably Available Control Measures (RACM) as expeditiously as practicable. The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area as components of the area's attainment demonstration. This includes the previously mentioned CO I/M program in Nashua and the street and intersection improvements in both Manchester and Nashua. Because each area has reached attainment, no additional measures are needed to provide for attainment.

Emission Inventory: Under the Clean Air Act as amended, States have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas toward attainment. Section 172(c)(3) of the CAA requires that nonattainment plan provisions include a comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. New Hampshire included the requisite inventory in the February 2, 1999 submittals for both Manchester and Nashua using 1990 as the base year for the inventory. Stationary point sources, stationary area sources, on-road mobile sources, and non-road mobile sources of CO were included in the inventories. The inventory is designed to address actual CO emissions for the area during the peak CO season. Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498 (April 16, 1992)). In today's action, EPA is approving the emission inventories for the Manchester and Nashua areas.

New Source Review: In an October 14, 1994 memorandum from Mary D. Nichols entitled ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' EPA established a new policy under which nonattainment areas may be redesignated to attainment notwithstanding the lack of a fully-approved part D NSR program, provided the program is not relied upon for maintenance. Consistent with policy, EPA is not requiring as a prerequisite to redesignation that the Manchester and Nashua CO nonattainment areas have a fully approved part D NSR program that meets the CAA requirements of 1990. In making this decision, EPA found that New Hampshire has not relied on its current SIP approved NSR program for CO sources to maintain attainment. On July 2, 1999, New Hampshire submitted NSR SIP revisions to make its rules consistent with the CAA requirements of 1990. In addition, the federal Prevention of Significant Deterioration (PSD) program under 40 CFR 52.21 will apply in the Manchester and Nashua CO areas once redesignated to prevent emission increases from new major new sources or major modifications in these areas from causing or contributing to a violation of the NAAQS.

Conformity: Under section 176(c) of the CAA, States are required to submit revisions to their SIPs that include criteria and procedures to ensure that federal actions conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act (''transportation conformity''), as well as all other federal actions (''general conformity''). Congress provided for the State revisions to be submitted one year after the date of promulgation of final EPA conformity regulations. EPA promulgated revised final transportation conformity regulations on August 15, 1997 (62 FR 43780) and final general conformity regulations on November 30, 1993 (58 FR 63214).

These conformity rules require that the States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to Sec. 51.390 of the transportation conformity rule, the State of New Hampshire was required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the federal rule by August 15, 1998. Similarly, pursuant to Sec. 51.851 of the general conformity rule, New Hampshire was required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the federal rule by December 1, 1994.

On July 10, 1999, the State of New Hampshire submitted a general conformity rule that EPA approved into the SIP on August 16, 1999 (64 FR 44417). In addition, New Hampshire has a State approved transportation

conformity rule that was officially submitted to EPA for inclusion into the SIP on December 7, 1998. EPA has not yet taken action on the transportation conformity rule.

Although New Hampshire does not yet have an approved transportation conformity SIP, EPA may approve this redesignation request. EPA interprets the requirement of a fully approved SIP in section 107(d)(3)(E)(v) to mean that, for a redesignation request to be approved, the State must have met all requirements that become applicable to the subject area before or at the time of the submission of the redesignation request. EPA's federal conformity rules require the performance of conformity analyses in the absence of state-adopted rules. Therefore, a delay in approving state rules does not relieve an area from the obligation to implement conformity requirements.

Areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under all circumstances, therefore, it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request. Furthermore, New Hampshire has continually fulfilled all of the requirements of the federal transportation conformity and general conformity rules, so it is not necessary that the State have their transportation conformity rule approved in the SIP before redesignation to insure that New Hampshire meet the substance of the conformity requirements.

On January 30, 1996, EPA modified its national policy regarding the interpretation of the provisions of section 107(d)(3)(E) concerning the applicable requirements for purposes of reviewing a CO redesignation request (61 FR 2918 (January 30, 1996)). Under this new policy, for the reasons discussed, EPA believes that the CO redesignation request may be approved notwithstanding the lack of approved state transportation conformity rules.

Each of the redesignation requests from New Hampshire contained carbon monoxide motor vehicle emission budgets for use in conformity. Those budgets were 55.83 tons per day for Manchester and 60.13 tons per day for Nashua. On March 2, 1999, the D.C. Circuit Court ruled that submitted emission budgets cannot be used for transportation conformity determinations until EPA has affirmatively found them adequate. EPA published an adequacy notice in the **Federal Register** on February 29, 2000 (65 FR 10785) notifying the public that we have found the motor vehicle emissions budgets for the New Hampshire cities of Manchester and Nashua, received by EPA on February 2, 1999 as part of the CO redesignation requests, adequate for conformity purposes. This **Federal Register** notice was simply an announcement of a finding that we have already made in a letter to the New Hampshire Department of Environmental Services on November 2, 1999. These budgets must be used in future conformity determinations, thereby capping motor vehicle emissions and preventing monitored CO values from exceeding the NAAQS.

In this action, EPA is approving the CO emission budgets submitted by New Hampshire for the cities of Manchester and Nashua into the CO SIP.

3. *Improvement in Air Quality Due to Permanent and Enforceable Measures*—EPA approved all of the components of New Hampshire's CO SIPs, submitted in 1982 for Manchester and 1985 for Nashua. Emission reductions achieved through the implementation of control measures contained in New Hampshire's CO SIPs are enforceable. In Manchester, this included the addition of turn lanes at Elm and Bridge Streets. In Nashua, this included making Lowell Street a two way thoroughfare, the development of the Kinsley Street extension, removal of parking on Main Street, and Main Street traffic optimizations. In addition, a basic CO I/M program was initiated in Nashua and eleven surrounding towns in 1987 to address high levels of CO recorded at the Main Street monitor. EPA is allowing New Hampshire to replace this program with the Tier 1 motor vehicle standards and RFG, which were implemented in1994 and 1995, respectively.

Manchester and Nashua have been achieving the CO NAAQS since 1987 and 1988, respectively, and both areas continue to monitor attainment to date. The air quality improvements in both cities are due to the permanent and enforceable measures contained in the SIPs. EPA finds that the combination of certain existing EPA-approved SIP and federal measures contribute to the permanence and enforceability of reduction in ambient CO levels that have allowed the area to attain the NAAQS.

4. *Fully Approved Maintenance Plan Under Section 175A*—Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems.

Section 175A of the Clean Air Act states that the twenty year maintenance period must consist of an initial ten year maintenance plan and the submittal of a second ten year maintenance plan eight years after redesignation. In the Manchester and Nashua CO redesignation requests, New Hampshire modeled for 2010 in addition to 2020. In addition, the State submitted a maintenance plan that extends to 2020 even though maintenance plans are typically only applicable for a ten year period, or until 2010. EPA will not require a second maintenance plan for the 2010 to 2020 period provided that New Hampshire submits to EPA an acknowledgment that the maintenance plan will remain in effect for a second ten year period, that New Hampshire will continue to implement that plan, and that both cities will remain in attainment. This acknowledgment must be received by EPA within eight years of the effective date of this redesignation. New Hampshire has acknowledged this requirement in the February 2, 1999 submittals for both Manchester and Nashua.

In this notice, EPA is approving the State of New Hampshire's maintenance plans for the Cities of Manchester and Nashua because EPA finds that New Hampshire's submittal meets the requirements of section 175A.

A. Attainment Emission Inventory

The State of New Hampshire submitted a comprehensive inventory of CO emissions for the Manchester and Nashua area. The inventory includes emissions from area, stationary, and mobile sources using 1990 as the base year for calculations. The 1990 inventory is considered representative of attainment conditions because the NAAQS was not violated during 1990 and was prepared in accordance with EPA guidance. New Hampshire established CO emissions for 1990 as well as forecasts to the year 2020. These estimates were derived from the State's 1990 emissions inventory. The State submittals contains the following information:

CARBON MONOXIDE EMISSION SUMMARY FOR MANCHESTER—BASE YEAR AND PROJECTED, 1999–2020

[Tons per day]

Year	On-road mobile	Off-road mobile	Stationary area	Stationary point	Total—all categories
1990	59.84	12.01	9.61	0.16	81.62
1999	35.86	12.78	10.15	0.16	58.95
2002	35.22	13.09	10.38	0.16	58.85
2005	34.58	13.42	10.61	0.16	58.77
2010	34.20	13.72	10.81	0.16	58.89
2020	38.90	14.43	11.20	0.16	64.69

CARBON MONOXIDE EMISSION SUMMARY FOR NASHUA—BASE YEAR AND PROJECTED, 1999–2020

[Tons per day]

Year	On-road mobile	Off-road mobile	Stationary area	Stationary point	Total—all categories
1990	62.72	9.07	7.69	0.40	79.88
1999	41.61	9.60	8.12	0.40	59.73
2002	42.56	9.79	8.26	0.40	61.01
2005	43.51	9.96	8.39	0.40	62.26
2010	45.51	10.11	8.50	0.40	64.52
2020	52.96	10.55	8.80	0.40	72.71

In today's action, EPA is approving the emission inventories for Manchester and Nashua.

B. Demonstration of Maintenance—Projected Inventories

Total CO emissions were projected from 1990 base year out to 2020. These projected inventories were prepared in accordance with EPA guidance, and it is anticipated that the area will maintain CO levels below the NAAQS.

C. Verification of Continued Attainment

Continued attainment of the CO NAAQS in the Manchester and Nashua areas depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period, and the State will submit periodic inventories of CO emissions. Therefore, eight years from today, New Hampshire must submit to EPA an acknowledgment that the maintenance plan will remain in effect and New Hampshire will continue to implement it for a second ten year period and that the area will maintain attainment through 2020.

D. Contingency Plan

The level of CO emissions in the Manchester and Nashua areas will largely determine its ability to stay in compliance with the CO NAAQS in the future. Despite the State's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS, although highly unlikely. Section 175A(d) of the CAA requires that the contingency provisions include a requirement that the State implement all measures contained in the SIP prior to redesignation, and New Hampshire has fulfilled this requirement. In addition, New Hampshire has provided contingency measures in the event of a future CO air quality problem.

New Hampshire has developed a continency plan consisting of the New Hampshire's low emission vehicle program [6] (NLEV), which was implemented for model year 1999, and the New Hampshire Enhanced Safety Inspection Program, which was implemented in 1999.[7] Although New Hampshire is implementing these programs as measures to achieve the NAAQS for ground level ozone, they are not required in nonclassified CO nonattainment areas under the CAA and can therefore be used as contingency measures. In order to be adequate, the maintenance plan should include at least one contingency measure that will go into effect with a triggering event. New Hampshire is relying largely on these two contingency measures that will go into effect regardless of any triggering event, thereby fulfilling this requirement. EPA accepts this approach.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the State must implement two ten year maintenance plans. New Hampshire must submit to EPA eight years from today an acknowledgment that its 20 year maintenance plan will remain in effect for a second ten year period.

5. *Meeting Applicable Requirements of Section 110 and Part D*—In this notice, EPA has set forth the basis for its conclusion that New Hampshire has a fully approved SIP that meets the applicable requirements of Section 110 and Part D of the CAA.

II. Final Action

EPA is approving the revision to the CO SIP for the City of Nashua; the CO redesignation request, maintenance plan, transportation conformity budget, and emissions inventory for the City of Nashua; and the CO redesignation request, maintenance plan, transportation conformity budget, and emissions inventory for the City of Manchester. The EPA is publishing this action without prior proposal because the Agency views these as a noncontroversial amendments and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective January 29, 2001 without further notice unless the Agency receives relevant adverse comments by December 29, 2000.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments

[6] New Hampshire's NLEV program was approved into the SIP on March 9, 2000 (65 FR 12476).

[7] A notice of proposed rulemaking for New Hampshire's enhanced safety I/M program was published on December 17, 1998 (63 FR 69589).

received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 29, 2001 and no further action will be taken on the proposed rule.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655 (May 10, 1998)). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255 (August 10, 1999)), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885 (April 23, 1997)), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729 (February 7, 1996)), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859 (March 15, 1988)) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 29, 2001. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: November 14, 2000.

Mindy S. Lubber,

Regional Administrator, EPA—New England.

Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart EE—New Hampshire

2. Section 52.1523 is amended by revising the table to read as follows:

§ 52.1523 Attainment dates for national standards.

* * * * *

Air quality control region	SO_2		PM_{10}	NO_2	CO	O_3
	Primary	Secondary				
NH portion Andoscoggin Valley Interstate AQCR 107	(a)	(b)	(a)	(a)	(a)	(a)
Central NH Intrastate AQCR 149	(a)	(b)	(a)	(a)	(a)	(a)
NH portion Merrimack Valley-Southern NH Interstate 121:						
Belnap County	(a)	(b)	(a)	(a)	(a)	(a)
Sullivan County	(a)	(b)	(a)	(a)	(a)	(a)
Cheshire County	(a)	(b)	(a)	(a)	(a)	(d)

Air quality control region	SO_2		PM_{10}	NO_2	CO	O_3
	Primary	Secondary				
Portmouth-Dover-Rochester area (See 40 CFR 81.330)	(a)	(b)	(a)	(a)	(a)	(e)
NH portion Boston-Lawrence-Worcester area (See 40 CFR 81.330)	(a)	(b)	(a)	(a)	(a)	(e)
Manchester area (See 40 CFR 81.330)	(a)	(b)	(a)	(a)	(a)	(c)

[a] Air quality levels presently below primary standards or area is unclassifiable.
[b] Air quality levels presently below secondary standards or area is unclassifiable.
[c] November 15, 1993.
[d] November 15, 1995.
[e] November 15, 1999.

3. Section 52.1528 is added to read as follows:

§ 52.1528 Control strategy: Carbon monoxide.

(a) Approval—On February 1, 1999, the New Hampshire Department of Environmental Services submitted a revision to the State Implementation Plan to remove the Nashua Inspection/Maintenance program for carbon monoxide that ceased operating on January 1, 1995. The Nashua Inspection/Maintenance was originally approved at § 52.1520(c)(39). The Nashua Inspection/Maintenance program was replaced with controls consisting of the existing federal Tier 1 emission standards for new vehicles and the federal reformulated gasoline program.

(b) Approval—On February 2, 1999, the New Hampshire Department of Environmental Services submitted a request to redesignate the City of Manchester carbon monoxide nonattainment area to attainment for carbon monoxide. As part of the redesignation request, the State submitted a maintenance plan as required by 175A of the Clean Air Act, as amended in 1990. Elements of the section 175A maintenance plan include a base year (1990 attainment year) emission inventory for carbon monoxide, a demonstration of maintenance of the carbon monoxide NAAQS with projected emission inventories to the year 2010 for carbon monoxide, a plan to verify continued attainment, a contingency plan, and an obligation to submit additional information in eight years acknowledging that the maintenance plan will remain in effect through the year 2020, as required by the Clean Air Act. If the area records a violation of the carbon monoxide NAAQS (which must be confirmed by the State), New Hampshire will implement one or more appropriate contingency measure(s) which are contained in the contingency plan. The menu of contingency measures includes the enhanced safety inspection program and New Hampshire's low emission vehicle program (NLEV) as contingency measures. The redesignation request establishes a motor vehicle emissions budget of 55.83 tons per day for carbon monoxide to be used in determining transportation conformity for the Manchester area. The redesignation request and maintenance plan meet the redesignation requirements in sections 107(d)(3)(E) and 175A of the Act as amended in 1990, respectively.

(c) Approval—On February 2, 1999, the New Hampshire Department of Environmental Services submitted a request to redesignate the City of Nashua carbon monoxide nonattainment area to attainment for carbon monoxide. As part of the redesignation request, the State submitted a maintenance plan as required by 175A of the Clean Air Act, as amended in 1990. Elements of the section 175A maintenance plan include a base year (1990 attainment year) emission inventory for carbon monoxide, a demonstration of maintenance of the carbon monoxide NAAQS with projected emission inventories to the year 2010 for carbon monoxide, a plan to verify continued attainment, a contingency plan, and an obligation to submit additional information in eight years acknowledging that the maintenance plan will remain in effect through the year 2020, as required by the Clean Air Act. If the area records a violation of the carbon monoxide NAAQS (which must be confirmed by the State), New Hampshire will implement one or more appropriate contingency measure(s) which are contained in the contingency plan. The menu of contingency measures includes the enhanced safety inspection program and New Hampshire's low emission vehicle program (NLEV) as contingency measures. The redesignation request establishes a motor vehicle emissions budget of 60.13 tons per day for carbon monoxide to be used in determining transportation conformity for the Nashua area. The redesignation request and maintenance plan meet the redesignation requirements in sections 107(d)(3)(E) and 175A of the Act as amended in 1990, respectively.

PART 81—[AMENDED]

4. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart C—Section 107 Attainment Status Designations

5. The table in § 81.330 entitled ''New Hampshire-Carbon Monoxide'' is revised to read as follows:

§ 81.330 New Hampshire.

* * * * *

NEW HAMPSHIRE—CARBON MONOXIDE

Designated area:	Designation		Classification	
	Date	Type	Date	Type
Manchester Area:				
Hillsborough County (part), City of Manchester.	1–29–01	Attainment.		
Nashua Area:				
Hillsborough County (part), City of Nashua.	1–29–01	Attainment.		
AQCR 107 Androscoggin Valley Interstate.		Unclassifiable/Attainment.		
Coos County				
AQCR 121 Merrimack Valley–S NH Interstate.		Unclassifiable/Attainment.		
Belknap County				
Cheshire County				
Hillsborough County (part), Area outside of Nashua and Manchester				
Merrimack County				
Rockingham County				
Stratford County				
Sullivan County				
AQCR 149 Central New Hampshire Intrastate.		Unclassifiable/Attainment.		
Carroll County				
Grafton County				

[FR Doc. 00–30275 Filed 11–28–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–6908–8]

RIN 2060–AI60

Petition by American Samoa for Exemption from Anti-Dumping Requirements for Conventional Gasoline

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (''EPA'' or ''the Agency'') is granting a petition by the Territory of American Samoa for exemption from the anti-dumping requirements for gasoline sold in the United States after January 1, 1995. This action is being taken because compliance with the anti-dumping requirements is not feasible or is unreasonable due to American Samoa's unique geographic location and economic factors. If the gasoline anti-dumping exemption were not granted, American Samoa would be required to import gasoline from a supplier meeting the anti-dumping requirements adding a considerable expense to gasoline purchased by the American Samoan consumer. American Samoa is in full attainment with the National Ambient Air Quality Standard (''NAAQS'') for ozone. This action is not expected to cause harmful effects to the citizens of American Samoa.

EPA is concurrently proposing in the Proposed Rules section of today's **Federal Register** approval of American Samoa's petition for reasons discussed in this document. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time. All correspondence should be directed to the addresses shown below.

DATES: This action will be effective on January 29, 2001, unless the Agency receives adverse or critical comments or a request for a public hearing by December 29, 2000. If the Agency receives adverse or critical comments, EPA will publish in the **Federal Register** timely notice withdrawing this action and the comments will be addressed in a subsequent final rule. If a request for a public hearing is received, this will be addressed in a subsequent **Federal Register** document.

ADDRESSES: Any persons wishing to submit comments should submit them (in duplicate, if possible) to the two dockets listed below, with a copy forwarded to Marilyn Winstead McCall, U.S. Environmental Protection Agency, Transportation and Regional Programs Division, 1200 Pennsylvania Avenue, NW., (Mail Code: 6406J), Washington, DC 20460.

Public Docket: Materials relevant to this petition are available for inspection in public docket A–99–17 at the Air Docket Office of the EPA, Room M–1500, 401 M Street, SW., Washington, D.C. 20460, (202) 260–7548, between the hours of 8 a.m. to 5:30 p.m., Monday through Friday. A duplicate public docket A–91–40 has been established at U.S. EPA Region IX, 75 Hawthorne Street, (Mail Code: A–2–1), 17th Floor, San Francisco, CA 94105, (415) 744–1225, and is available between the hours of 8:30 a.m. to noon, and from 1 p.m. to 5 p.m., Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Marilyn Winstead McCall at (202) 564–9029, facsimile: (202) 565–2085, e-mail address: *McCall.mwinstead@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected by this rule are those involved with the production, distribution, importation, and sale of conventional gasoline used in the Territory of American Samoa. Regulated categories and entities include:

Category:	Examples of regulated entities:
Industry	Gasoline refiners and importers, gasoline terminals, gasoline truckers, blenders, retailers and wholesale purchaser-consumers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this rule. This table lists the types of entities we are now aware could potentially be affected by this rule. Other types of entities not listed could also be affected by this rule. To determine whether you are affected by this rule, you should carefully examine the applicability requirements in §§ 80.90 and 80.125, Subparts E and F of title 40 of the Code of Federal Regulations (''CFR''). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Background

A. Why Is EPA Publishing This Rule Without Prior Proposal?

EPA views this rule as a noncontroversial amendment to the gasoline anti-dumping regulations and anticipates no adverse comment. American Samoa is in attainment with the air quality standards. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to approve the direct final rule if adverse comments are filed. If adverse comments are filed, please see **EFFECTIVE DATE** section above.

B. What Did American Samoa Request in Its Petition?

On March 9, 1999, the Honorable Tauese P.F. Sunia, Governor of the Territory of American Samoa, petitioned the Agency for an exemption from the requirements of regulations in 40 CFR Part 80 that require conventional gasoline meet certain anti-dumping specifications. Specifically, the petition requested ''* * * exemption from the regulations of 40 CFR Part 80 Subparts E and F for the Anti-Dumping of Fuel.'' [1]

C. What Are the Gasoline Anti-Dumping Requirements and How Do They Apply to American Samoa?

In 1993, EPA promulgated regulations on the production and sale of reformulated gasoline and gasoline that is not required to be reformulated, or ''conventional'' gasoline. For conventional gasoline, the gasoline produced by a refiner or importer must not be more polluting or cause more motor vehicle emissions than gasoline produced by that refiner or importer in 1990. In the production of reformulated gasoline (a gasoline that has been further processed and refined to reduce components that contribute most to pollution), a refiner cannot ''dump'' into its conventional gasoline pool those polluting components removed from the refiner's reformulated gasoline. This is commonly called the ''anti-dumping'' gasoline program, and these requirements apply to all gasoline produced, imported, and consumed in the United States and its territories.

D. What Are the Statutory Provisions Governing This Petition?

Section 211(k) of the Clean Air Act (''CAA'' or the ''Act'') requires that gasoline be reformulated to reduce motor vehicle emissions of toxic and tropospheric ozone-forming compounds, and that this reformulated gasoline be sold in the largest metropolitan areas with the most severe summertime ozone levels and in other ozone nonattainment areas that opt into the program. Section 211(k)(8) prohibits conventional gasoline sold in the rest of the country from becoming any more polluting than it was in 1990, thereby ensuring that refiners do not dump fuel components into conventional gasoline causing environmentally harmful emissions restricted in reformulated gasoline. Regulations were promulgated December 15, 1993, and are codified in 40 CFR Part 80.

Section 325 of the Clean Air Act provides that, upon petition by the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Administrator may exempt any person or source in such territory from various requirements of the Act. It states that ''* * * such exemption may be granted if the Administrator finds that compliance with such requirements is not feasible or is unreasonable due to unique, geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant.''

II. Discussion of American Samoa's Petition

A. Are There Unique Geographic, Demographic and Climatic Factors in American Samoa That Affect Their Petition?

American Samoa is a group of five volcanic islands and two coral atolls, located in Polynesia, approximately 2,300 miles southwest of Hawaii and 1,600 miles northeast of New Zealand. American Samoa contains approximately 76 square miles, about two-thirds of which are mountainous with steep slopes that make it virtually inaccessible. The largest island is Tutuila which is approximately 53 square miles. The small island of Aunu'u lies near the east end of Tutuila. The other inhabited islands are Tau, Ofu, Olesaga and Swain's Island. Rose Atoll is uninhabited. The population was estimated to be 52,400 in 1993—over 96% of which live on the island of Tutuila.

American Samoa has a tropical, maritime climate, with abundant rainfall, winds, and warm, humid days and nights. The mean annual temperature is about 80 degrees. Rainfall is about 125 inches a year near the airport, but varies greatly over small distances because of the mountainous topography. Pago Pago (the major city) which is less than 4 miles north of the airport and at the head of a hill-encircled harbor is open to the prevailing winds and receives nearly 200 inches of rainfall a year. The crest of the mountain range receives over 250 inches each year. American Samoa's petition states that due to the prevailing easterly trade winds throughout the year, its tropical climate, remoteness, and low population, the air quality in the territory is generally pristine. It is in attainment with the air quality standards including the National Ambient Air Quality (''NAAQS'') standard for ozone.

B. Are There Economic Factors in American Samoa That Are Unique and That Affect Their Petition?

Because of its remoteness from the mainland, American Samoa has imported its fuel from refineries in Hawaii and the Far East. American Samoa's March 9, 1999 petition stated that at the time the petition was filed, almost all of their motor vehicle

[1] Letter from Governor Tauese P.F. Sunia, American Samoa, to Felicia Marcus, Regional Administrator, U.S. Environmental Protection Agency, Region 9, dated March 9, 1999.

gasoline has been supplied by the Tesoro Corporation refinery in Hawaii. This gasoline complied with the gasoline anti-dumping regulations for conventional gasoline. Motor vehicle gasoline represents only about 11 percent of the fuel market in the territory; diesel fuel represents 72 percent; and jet fuel represents about 17 percent. ExxonMobil (''Mobil'') supplies the islands with about 65% of the diesel fuel from its refineries in Australia and Singapore.

C. Other Significant Local Factors

American Samoa's petition states that in 1990, American Samoa's annual per capita income was $3,039. The U.S. median income is about $21,120.[2] Moreover, due to relatively high transportation costs, retail gasoline prices are already significantly higher in American Samoa than in the continental U.S. In August 2000, the U.S. average price of regular unleaded gasoline at the retail level was $1.48 per gallon.[3] In American Samoa, the average price is 20 cents higher than that on the mainland. Therefore, in August 2000, it was around $1.68 per gallon.

There are 5,126 registered motor vehicles in American Samoa. The motor gasoline market is small compared to the diesel market. The American Samoan government owns its own fuel terminal and fuel dock and selects a terminal operator to manage the facilities. A U.S. District Court (for California) determined in 1973 that one oil marketer had violated the Sherman Act by attempting to monopolize the distribution and sale of petroleum products in American Samoa. Subsequently, the Court issued a ''Court Plan,'' the goal of which was to assure an equal competitive position to all suppliers of petroleum products in American Samoa, including the opportunity to use the tank farm for storage on a shared basis. The American Samoa government's aim was to assure that American Samoans receive the benefits of competition by having a choice of products at the lowest prices.

Tesoro has supplied American Samoa with complying gasoline from 1995 through 1999. During this time, Tesoro also operated the fuel terminal in its capacity as terminal operator.

D. Enforcement Deferred (''Interim'') Period

Since the petition was filed, EPA learned in November 1999, that Tesoro was withdrawing from the American Samoan gasoline market effective January 1, 2000.[4] This company has been supplying American Samoa with about 80% of its gasoline, whereas Mobil has been supplying about 20% , albeit at a higher price (due to the need to make special runs of compliant product from the company's Melbourne, Australia refinery). However, this company does not always supply fuel from the Australian refinery—sometimes their cargoes originate from a Singapore refinery which does not have the capability of making complying gasoline.

Negotiations with BP South West Pacific Limited (''BP'') have concluded in BP's taking over the gasoline supply commitments formerly held by Tesoro, beginning January 1, 2000. They estimate that ''huge costs'' will result if they are required to comply with the anti-dumping requirements, with as much as 14 to 18 cents more per gallon being charged the American Samoan consumer. Since a gallon of gasoline on the islands is already 20 cents more per gallon than on the U.S. mainland, the cost to the American Samoan citizen for a gallon of complying gasoline could be as much as 38 cents more per gallon. Consequently, American Samoa petitioned EPA on December 30, 1999, for ''* * * enforcement discretion by declining to enforce the gasoline anti-dumping regulations pending the effectiveness of the anticipated rule.'' [5] Subsequently, EPA granted enforcement discretion for a one year period—from January 1, 2000 to January 1, 2001.[6]

The end result of the November 1999 notification of Tesoro's withdrawing from the American Samoan market is that American Samoa is left with two importers (Mobil and BP) that are willing to supply American Samoa with gasoline. The cost of the gasoline supplied will be significantly lower if they are not required to comply with the gasoline anti-dumping regulations.

III. Clarification of the Gasoline Anti-Dumping Requirements (Subparts E and F)

A. How Is Compliance With the Gasoline Anti-Dumping Requirements Measured?

Compliance is measured by comparing emissions of a refiner's or importer's conventional gasoline against those of a baseline gasoline—either a baseline based on the quality of the refiner's or importer's 1990 gasoline or on a statutory baseline specified by the Clean Air Act. EPA's regulations at 40 CFR part 80, subparts E and F require a refiner or importer that establishes a baseline to hire an independent auditor to verify its baseline parameters. They also require that each refiner or importer maintain records and report to EPA certain information pertaining to production of conventional gasoline, beginning in February 1996, and every subsequent year.[7]

B. Which of the Gasoline Parameters Are Required To Meet the Baseline Under the Anti-Dumping Regulations?

Section 211(k)(8) requires that average per gallon emissions of volatile organic compounds (VOC), carbon monoxide (CO), nitrogen oxides (NO_X) and toxics due to conventional gasoline produced by a refiner or importer not increase over 1990 levels for each refiner or importer. Since VOC and CO emission increases are expected to be controlled through other regulatory programs, the anti-dumping provisions are limited to regulating emissions of toxics and NO_X emissions.

Pursuant to section 211(k)(8) of the Act, EPA adopted the regulations in subpart E to address exhaust benzene, total exhaust toxics and NO_X emissions from conventional gasoline use. Under a simple emissions model, applicable from January 1, 1995 to January 1, 1998, a limit is set for sulfur, olefins and T90 as well as exhaust benzene. A more complex emissions model was required January 1, 1998, with limits set on exhaust toxics and NO_X. All the limits are set as annual averages.

IV. Rationale for Exemption

A. Unique Geographic and Economic Factors Relating to an Exemption in American Samoa.

Due to the distance from the U.S. mainland, American Samoa has been supplied with most of its gasoline by Tesoro Corporation's Hawaii refinery. There is another company operating a refinery in Hawaii; however, since 1991, only the Tesoro refinery has been

[2] U. S. Bureau of Census (Phone conversation December 1999 with EPA employee).

[3] ''The Oil Daily,'' Vol. 50, No. 167, August 30, 2000, page 7.

[4] Letter from Jack Kachmarik, Chief Petroleum Officer, American Samoa Government to EPA, dated November 12, 1999.

[5] Letter from Tauese P.F. Sunia, Governor of the Territory of American Samoa, to Mr. Robert W. Perciasepe, dated December 30, 1999.

[6] Letter from Steven A. Herman, Assistant Administrator, EPA Office of Enforcement and Compliance Assurance, to Governor Tauese P.F. Sunia, dated January 14, 2000.

[7] See 40 CFR part 80, §§ 80.105 and 80.125.

interested in servicing the American Samoan gasoline market. Prior to 1991, both Shell Oil and Mobil Oil supplied gasoline to American Samoa. These companies have since withdrawn as full time suppliers from the American Samoan market. Therefore, since 1995—the year the gasoline anti-dumping regulations went into effect—American Samoa has been mainly supplied with gasoline complying with the anti-dumping regulations from the Tesoro Hawaiian refinery.

Tesoro was also selected to operate the petroleum terminals on the islands in a 1998 request for proposals issued by the American Samoan government. American Samoa's petition states that a virtual monopoly situation exists by this one company by their controlling the operation of the terminals as well as almost all of the gasoline supply. The petition states that this is one reason why other companies have been discouraged from entering the gasoline market in American Samoa.

The Court Plan mentioned previously was modified in 1994 retaining the Court's jurisdiction over the terminal facilities and preserving the ability of potential new suppliers to use the facilities on a shared-cost basis. The supporting material presented to the court included a permit and agreement between American Samoa and the terminal operator which contained a modified maximum allowable price formula as a safeguard against excessive monopoly pricing by the terminal operator. American Samoa's petition states that because of this dual responsibility by Tesoro and the fact that only Tesoro was capable of supplying complying gasoline on a full time basis, a monopoly situation has existed and, therefore, competition was discouraged.

Two other companies—Mobil and BP—entered the fuel market in 1998, and mainly import diesel fuel to the islands. They have not been able to import gasoline that meets the anti-dumping regulations (except for a small amount of ''special order'' gasoline imported from Australia by Mobil that is offered at a much higher price than that offered by Tesoro). Mobil and BP operate refineries in Australia and Singapore. As previously stated, Mobil operates a refinery in Melbourne, Australia that makes some gasoline which complies with the anti-dumping regulations. However, because this gasoline is ''specially ordered,'' it costs the American Samoan consumer about 10 cents more per gallon above the normal prices, and Mobil cannot assure a continuous supply. Also, Mobil does not always supply the American Samoan fuel market out of their Melbourne refinery. Some cargoes (containing mostly diesel fuel) come from their refineries in Singapore which do not make the ''special-order'' gasoline.

B. Exemption Basis

Mobil and BP have indicated an interest in supplying the American Samoa market by agreeing to take over the marketing commitments formerly held by Tesoro after that company withdrew in January 2000.[8] Both of these companies supply gasoline to Fiji, Western Samoa and other Pacific Islands. Transportation costs dictate that these Pacific Islands' markets be supplied by Far Eastern refineries. While EPA's regulations do not apply to those Far Eastern refineries, they do apply to any importer of gasoline into the U.S. and its territories. The American Samoa gasoline market is a very small market—only approximately 5,000,000 gallons of motor gasoline are imported per year.

After the expiration of the interim period and if the exemption is not granted, Mobil and BP would be required to supply American Samoa with gasoline that does not exceed the statutory baseline emissions for exhaust toxics and NO_X—the two emissions controlled by the anti-dumping program. The statutory baseline is a combination of summer and winter components, including emissions calculated under the appropriate seasonal version of the Complex Model, the tool used in determining compliance with the reformulated gasoline and anti-dumping regulations.[9] Additionally, the anti-dumping regulations require that the emissions of gasoline sold in areas not subject to EPA's gasoline volatility requirements[10] which include American Samoa and other U.S. territories, be evaluated using only the winter version of the Complex Model. As discussed in a recent rulemaking (see 64 FR 30904, June 9, 1999), it is somewhat more difficult to produce or import gasoline which meets the statutory baseline requirements when that gasoline must all be evaluated using the winter version of the Complex Model, because the winter version predicts higher emissions than the summer version, and, as stated, the statutory baseline is a combination of the summer and winter components. In the referenced rulemaking, under certain conditions, a refiner is allowed to evaluate its gasoline using only the summer model (given American Samoa's climate, it would be more appropriate to use the summer model if a single seasonal model is being considered) and compare the results to only the summer baseline. The quality of a few batches shipped to American Samoa (by BP) in 2000 (February 8, 2000 to June 23, 2000, which represents about 30 percent of the total gasoline volume imported to the islands annually), showed that the gasoline, when evaluated with either seasonal model and compared to the corresponding statutory seasonal baseline, was close to complying. However, both Mobil and BP have indicated that the gasoline sent to Samoa will be produced at a number of foreign refineries and that such quality cannot be guaranteed, especially considering transportation costs and the small volumes of gasoline used in American Samoa. In this situation, compliance with the statutory baseline (either the annual average statutory baseline or either seasonal statutory baseline) can be even more onerous because the quality (with regard to fuel properties like benzene and sulfur content) of gasoline produced at Far Eastern refineries can be quite different from that of gasoline produced by the typical mainland U.S. refinery. For example, Singapore refineries typically produce gasoline having lower concentrations of sulfur and olefins and relatively higher concentrations of benzene and aromatics. EPA understands that gasoline being imported from the Singapore refineries would be similar in quality to that being imported into Guam and the Northern Mariana Islands where exemptions from the gasoline anti-dumping regulations apply. For a more detailed discussion of these differences, please see notices of direct final decision exempting gasoline from the anti-dumping requirements in Guam and the Northern Mariana Islands.[11]

Because of these differences in fuel quality, and because of the requirement that American Samoa gasoline be evaluated using the winter version of the Complex Model, EPA believes the Far Eastern gasoline that would be available to American Samoa cannot consistently satisfy the anti-dumping requirements when compared to statutory baseline gasoline. Additionally, EPA believes that consistent compliance with either the winter or summer statutory baseline

[8] See Letter from Jack Kachmarik, Chief Petroleum Officer, American Samoa Government, to EPA, dated November 12, 1999.

[9] See 40 CFR 80.101(f).

[10] See 40 CFR 80.27.

[11] See 61 FR 53854, October 16, 1996, and 62 FR 63855, December 3, 1997, respectively.

(after evaluating the gasoline using the corresponding seasonal model) cannot practically be guaranteed (*i.e.,* without unacceptable economical impacts to the American Samoa consumer and without environmental benefit), and thus is not a reasonable alternative to exemption from the anti-dumping requirements in this situation. If this exemption were not granted, importers of gasoline to American Samoa would have to seek out and transport gasoline with the qualities which would allow it to comply with the statutory baseline annual average exhaust toxics and NO_X emissions. This would significantly increase the price of gasoline in American Samoa because transportation costs for such a small quantity of gasoline would be high. Gasoline in American Samoa is already 20 cents per gallon higher than on the mainland, and BP and Mobil state that price increases of 10 cents more per gallon could be added to the already high price of gasoline in American Samoa if the petition is not granted. Since Tesoro, whose refinery is located in Hawaii, withdrew from the American Samoa market, there have been no importers in the Pacific Rim that have indicated to EPA their willingness to supply American Samoa with gasoline that complies with the statutory baseline. Therefore as no optional sources of complying gasoline have been forthcoming, American Samoa is reliant upon BP and Mobil Far Eastern refineries to fill their gasoline supply. Both companies state that if the exemption is granted the price of gasoline could decrease by 5 to 10 cents per gallon. This decrease would be partly due to increased competition and to these companies' abilities to sell solely on the basis of lower Singapore prices, which alone, would drop the price by 4 to 5 cents per gallon. EPA does not expect that exempting gasoline imported to American Samoa from the anti-dumping requirements will negatively affect air quality.

Final Action

EPA has decided to grant a petition by the Territory of American Samoa and exempt the Territory of American Samoa from compliance with the anti-dumping standards for conventional gasoline under section 211(k)(8). The Agency believes that compliance with the gasoline anti-dumping requirements is unreasonable given the significantly increased costs to consumers in American Samoa in achieving compliance. These increased costs are directly attributable to American Samoa's location and resulting inability of importers to comply with the anti-dumping requirements without significantly greater costs than those expected for importers in the U.S. mainland. Gasoline price increases of the magnitude expected to result from compliance with the conventional gasoline anti-dumping regulations at 40 CFR part 80, subparts E and F could be especially burdensome for the many citizens of American Samoa.

In addition, despite its geographic remoteness from the mainland, compliance with the anti-dumping provisions might require that American Samoa import conventional gasoline from the U.S. mainland, greatly increasing the cost of conventional gasoline for the American Samoans. EPA finds that these economic factors are unique to the Territory of American Samoa.

This exemption applies to all importers and suppliers of gasoline in American Samoa. EPA will review and reopen this exemption in the future if conditions change to warrant such an action.

VI. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866.

B. Paperwork Reduction Act

This action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and therefore is not subject to these requirements.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives that achieve the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule imposes no enforceable duty or mandate on any State, local or tribal governments or the private sector. Rather, today's rule removes enforceable duties and mandates on these entities.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of

the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' as defined in the Executive Order include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's consultation with State and local officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, it must include a certification from EPA's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This rule will not have a substantial direct effect on States or local governments, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. This rule, by exempting the gasoline anti-dumping requirements in American Samoa, removes the federal role of mandating and enforcing these gasoline requirements.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Congressional Review

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement, 5 U.S.C. 808(2). EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(a).

H. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

After considering the economic impacts of today's direct final rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. Sections 603 and 604. Thus an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule removes the gasoline anti-dumping regulations from American Samoa, we conclude that today's direct final rule will relieve regulatory burden for all small entities.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless, the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns and statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting

elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

Today's rule does not create any mandates or impose any obligations on State, Local, or Tribal governments, and thus does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. Electronic Copies of Rule

A copy of this action is available on the Internet at *http://www.epa.gov/otaq* under the title: ''Direct Final Rule on Petition by American Samoa for Exemption from Anti-Dumping Requirements for Conventional Gasoline.''

K. Statutory Authority

Authority for the action described in this notice is in section 325(a)(1) (42 U.S.C. 7625–1(a)(1)) of the Clean Air Act as amended.

Dated: November 17, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–30273 Filed 11–28–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2613; MM Docket No. 99–229; RM–9479]

Radio Broadcasting Services; Dayton, Incline Village and Reno, Nevada

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the jointly filed request of Salt Broadcasting, LLC and Americom Las Vegas Limited Partnership substitutes Channel 261C1 for Channel 261C2 and reallots Channel 261C1 from Incline Village, Nevada to Dayton, Nevada, as the community's first local commercial FM service and reallots Channel 295C from Reno to Incline Village in order for the community to retain a first local aural service. *See* 64 FR 34755, June 29, 1999. Channel 261C1 can be allotted to Dayton in compliance with the Commission's minimum distance separation requirements with a site restriction of 36.8 km (22.9 miles) northeast, at coordinates 39–29–27 NL; 119–19–03 WL. Channel 295C can be allotted to Incline Village with a site restriction of 10.1 km (6.3 miles) northeast, at the Station KRNO–FM's presently licensed transmitter site at coordinates 39–18–38 NL; 119–53–01 WL.

DATES: Effective January 2, 2001.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–229, adopted November 8, 2000, and released November 17, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Channel 261C1 at Dayton, by removing Channel 261C2 at Incline Village and adding Channel 295C at Incline Village, and by removing Channel 295C at Reno.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–30369 Filed 11–28–00; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 65, No. 230
Wednesday, November 29, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–149–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 and MD–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 and MD–10 series airplanes. This proposal would require an inspection of the one phase remote control circuit breakers (RCCB) in the main avionics compartment and center accessory compartment to determine their part numbers and serial numbers, and replacement of RCCB's with certain RCCB's, if necessary. This action is necessary to ensure that defective braze joints of certain latch assemblies of the RCCB are not installed on the airplane. Defective braze joints could fail and prevent the RCCB from tripping during an overload condition, which could result in a fire and smoke in certain wire bundles that are routed to and from the main avionics compartment or center accessory compartment. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 16, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–149–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–149–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–149–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–149–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has been informed by the airplane manufacturer that certain latch assemblies of the one phase remote control circuit breakers (RCCB) were manufactured with defective braze joints. These defective braze joints are installed on certain McDonnell Douglas Model DC–10 and MD–10 series airplanes. The defective braze joints that are located between the bimetal assembly and the latch are limited to two lots with specific part numbers and serial numbers. Defective braze joints could fail and prevent the RCCB from tripping during an overload condition, which could result in a fire and smoke in certain wire bundles that are routed to and from the main avionics compartment or center accessory compartment.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model DC–10 and MD–10 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential

unsafe conditions and to take appropriate corrective actions. This proposed AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin DC10–24A164, dated June 22, 2000. The service bulletin describes procedures for a one-time general visual inspection of the one phase RCCB's in the main avionics compartment and center accessory compartment to determine their part numbers and serial numbers, and replacement of the RCCB's with RCCB's having the same part number with a certain serial number, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 446 Model DC–10 and MD–10 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 312 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $112,320, or $360 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–149–AD.

Applicability: Model DC–10 and MD–10 series airplanes, as listed in Boeing Alert Service Bulletin DC10–24A164, dated June 22, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fire and smoke in certain wire bundles that are routed to and from the main avionics compartment or center accessory compartment, accomplish the following:

Inspection and Replacement, If Necessary

(a) Within 6 months after the effective date of this AD, perform a one-time general visual inspection of the one phase remote control circuit breakers (RCCB) in the main avionics compartment and center accessory compartment to determine the part numbers and serial numbers (identified in Table 2 of the Accomplishment Instructions of the service bulletin), in accordance with Boeing Alert Service Bulletin DC10–24A164, dated June 22, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) If any RCCB has a part number listed in Table 2 of the Accomplishment Instructions of the service bulletin and the corresponding serial number is NOT identified in that table, no further action is required by this AD.

(2) If any RCCB has a part number listed in Table 2 of the Accomplishment Instructions of the service bulletin and the corresponding serial number is identified in that table, before further flight, replace the RCCB with a RCCB having the same part number with a serial number that is NOT identified in Table 2, in accordance with the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 22, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30445 Filed 11–28–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–148–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 series airplanes. This proposal would require a general visual inspection to detect chafing or damage of the feeder cables of the external ground power in the forward cargo compartment between certain fuselage stations; and repair, if necessary. This proposal also would require installation of spiral wrap on the feeder cables of the external ground power. This action is necessary to prevent chafing of the feeder cables during removal of the sump panels of the cargo floor, which could result in electrical arcing and damage to adjacent structure, and consequent smoke and/or fire in the forward cargo compartment. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 16, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–148–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–148–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–148–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–148–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware that the feeder cable of the external ground power failed on McDonnell Douglas Model DC–10 series airplanes. The cause of this failure is attributed to cables being chafed during prior removal of the sump panels of the cargo floor, which resulted in electrical arcing and damage to adjacent structure. These conditions, if not corrected, could result in smoke and/or fire in the forward cargo compartment.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model DC–10 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC10–24A147, Revision 02, dated March 6, 2000. The service bulletin describes procedures for a general visual inspection to detect chafing or damage of the feeder cables of the external ground power in the forward cargo compartment between fuselage stations Y=879.000 and Y=1019.000 left of centerline; and repair, if necessary. The service bulletin also describes procedures for installation of spiral wrap on the feeder cables of the external ground power. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 260 Model DC–10 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 171 airplanes of U.S. registry would be affected by this proposed AD.

For Groups 1, 2, and 3 airplanes, it would take approximately 5 work hours per airplane (including gaining and closing access) to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection AD on U.S. operators is estimated to be $300 per airplane.

For Group 1 airplanes, it would take approximately 2 work hours per airplane (including gaining and closing access) to accomplish the proposed installation, at an average labor rate of $60 per work hour. Required parts would cost approximately $140 per airplane. Based on these figures, the cost impact of the proposed installation AD on U.S. operators of Group 1 airplanes is estimated to be $260 per airplane.

For Group 2 airplanes, it would take approximately 3 work hours per airplane (including gaining and closing access) to accomplish the proposed installation, at an average labor rate of $60 per work hour. Required parts would cost approximately $140 per airplane. Based on these figures, the cost impact of the proposed installation AD on U.S. operators of Group 2 airplanes is estimated to be $320 per airplane.

For Group 3 airplanes, it would take approximately 4 work hours per airplane (including gaining and closing access) to accomplish the proposed installation, at an average labor rate of $60 per work hour. Required parts would cost approximately $140 per airplane. Based on these figures, the cost impact of the proposed installation AD on U.S. operators of Group 3 airplanes is estimated to be $380 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–148–AD.

Applicability: Model DC–10 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–24A147, Revision 02, dated March 6, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the feeder cables during removal of the sump panels of the cargo floor, which could result in electrical arcing and damage to adjacent structure, and consequent smoke and/or fire in the forward cargo compartment, accomplish the following:

Inspection, Installation of Spiral Wrap, and Repair, If Necessary

(a) Within 1 year after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD per McDonnell Douglas Alert Service Bulletin DC10–24A147, Revision 02, dated March 6, 2000.

(1) Do a general visual inspection to detect chafing or damage of the feeder cables of the external ground power in the forward cargo compartment between fuselage stations Y=879.000 and Y=1019.000 left of centerline. If any chafing or damage is detected, before further flight, repair the feeder cables of the external ground power and adjacent structure.

Note 2: For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(2) Install spiral wrap on the feeder cables of the external ground power.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angles ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 22, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30444 Filed 11–28–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–112502–00]

RIN 1545–AY45

Guidance Under Subpart F Relating to Partnerships; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed rulemaking relating to the treatment of a controlled foreign corporation's (CFC's) distributive share of partnership income.

DATES: The public hearing originally scheduled for Tuesday, December 5, 2000, at 10 a.m., is canceled.

FOR FURTHER INFORMATION CONTACT: Treena Garrett of the Regulations Unit, Office of Special Counsel (Modernization and Strategic Planning), at 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on September 20, 2000 (65 FR 56836), announced that a public hearing was scheduled for December 5, 2000, in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations. The deadline for outlines of oral comments and requests to speak expired on November 14, 2000.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of November 21, 2000, no one has requested to speak. Therefore, the public hearing scheduled for December 5, 2000, is canceled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Office of Special Counsel (Modernization and Strategic Planning).

[FR Doc. 00–30448 Filed 11–28–00; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[NH–45–7172b; A–1–FRL–6906–3]

Approval and Promulgation of Air Quality Implementation Plans and Designations of Areas for Air Quality Planning Purposes; State of New Hampshire; Revision to the Carbon Monoxide State Implementation Plan, City of Nashua; Carbon Monoxide Redesignation Request, Maintenance Plan, Transportation Conformity Budget, and Emissions Inventory for the City of Nashua; Carbon Monoxide Redesignation Request, Maintenance Plan, Transportation Conformity Budget, and Emissions Inventory for the City of Manchester

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to redesignate the Nashua, New Hampshire nonattainment area to attainment for the carbon monoxide (CO) air quality standard and is proposing to approve a Maintenance Plan that will insure that the Nashua area remains in attainment. The EPA is also proposing to redesignate the Manchester, New Hampshire nonattainment area to attainment for the CO air quality standard and is proposing to approve a maintenance plan that will insure that the Manchester area remains in attainment. Under the Clean Air Act, as amended in 1990 (the CAA), designations can be revised if sufficient data are available to warrant such revisions and the request to redesignate shows that all of the requirements of section 107(d)(E)(3) of the CAA have been met. EPA is proposing to approve the New Hampshire maintenance plans and other redesignation submittals because they meet the maintenance plan and redesignation requirements, and will ensure that the two areas remain in attainment. The approved maintenance plans will become a federally enforceable part of the New Hampshire State Implementation Plan (SIP). In this action, EPA is also proposing to approve the New Hampshire 1990 baseline emission inventories for both of these areas, transportation conformity budgets for both areas and a revision to the inspection and maintenance (I/M) SIP approved for the Nashua area.

In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without a prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Written comments must be received on or before December 29, 2000.

ADDRESSES: Comments may be mailed to David Conroy, Manager, Air Quality Planning Unit, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, New England office, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, New England office, One Congress Street, 11th floor, Boston, MA and Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Butensky, Environmental Planner, Air Quality Planning Unit of the Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, New England office, One Congress Street, Boston, MA 02114–2023, (617) 918–1665 or at butensky.jeff@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the direct

final rule which is located in the Rules Section of this **Federal Register**.

Dated: November 14, 2000.

Mindy S. Lubber,

Regional Administrator, EPA New England.

[FR Doc. 00–30276 Filed 11–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–6908–7]

RIN 2060–AI60

Petition by American Samoa for Exemption From Anti-Dumping Requirements for Conventional Gasoline

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (''EPA'' or ''the Agency'') is proposing to grant a petition by the Territory of American Samoa for exemption from the anti-dumping requirements for gasoline sold in the United States after 1995. This action is being taken because compliance with the anti-dumping requirements is not feasible or is unreasonable due to American Samoa's unique geographic location and economic factors. If the gasoline anti-dumping exemption were not granted, American Samoa would be required to import gasoline from suppliers meeting the anti-dumping requirements, adding a considerable expense to gasoline purchased by the American Samoa consumer. American Samoa is in full attainment with the National Ambient Air Quality Standard (''NAAQS'') for ozone. This action is not expected to cause harmful environmental effects to the citizens of American Samoa.

DATES: Comments on this proposed final decision must be received in writing by December 29, 2000.

ADDRESSES: Materials relevant to this petition are available for inspection in public docket A–99–17 at the Air Docket Office of the EPA, Room M–1500, 401 M Street, SW., Washington, DC 10460, (202) 260–7548, between the hours of 8:00 a.m. to 5:30 p.m., Monday through Friday. A duplicate public docket A–91–40 has been established at U.S. EPA Region IX, 75 Hawthorne Street (Mail Code: A–2–1), 17th Floor, San Francisco, CA 94105, (415) 744–1225, and is available between the hours of 8:30 a.m. to noon, and from 1 p.m. to 5 p.m., Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Marilyn Winstead McCall at (202) 564–9029, facsimile: (202) 565–2085, e-mail address: *McCall.mwinstead@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION: For more detailed information on this proposal, please see EPA's Direct Final Rule published in the Final Rules section of this **Federal Register** which approves American Samoa's petition for exemption from the gasoline anti-dumping regulations. The Agency views this direct final rule as a noncontroversial action for the reasons discussed in the Direct Final Rule published in today's **Federal Register**. If no adverse or critical comments or request for a public hearing are received in response to this proposal, no further action is contemplated in relation to this rule. If EPA receives adverse or critical comments, EPA will withdraw the Direct Final Rule by publishing an appropriate document in the **Federal Register**, and all public comments received will be addressed in a subsequent document. If a request for a public hearing is received, this will be addressed in a subsequent **Federal Register** notice. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

Dated: November 17, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–30274 Filed 11–28–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2597, MM Docket No. 00–235, RM–9992]

Digital Television Broadcast Service; Lead, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Duhamel Broadcasting Enterprises, licensee of station KHSD–TV, NTSC Channel 11, Lead, South Dakota, requesting the substitution DTV channel 10 for station KHSD–TV's assigned DTV channel 30. DTV Channel 10 can be allotted to Lead, South Dakota, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (44–19–36 N. and 103–50–12 W.). As requested, we propose to allot DTV Channel 10 to Lead with a power of 34.8 and a height above average terrain (HAAT) of 576 meters.

DATES: Comments must be filed on or before January 16, 2001, and reply comments on or before January 31, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Colette M. Capretz, Shaw Pittman, 2300 N Street, NW, Washington, DC 20037–1128 (Counsel for Duhamel Broadcasting Enterprises).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–235, adopted November 22, 2000, and released November 24, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under South Dakota is amended by removing DTV Channel 30 and adding DTV Channel 10 at Lead.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–30363 Filed 11–28–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2596, MM Docket No. 00–234, RM–9999]

Digital Television Broadcast Service; Reno, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Broadcast Development Corporation, licensee of station KAME–TV, NTSC channel 21, Reno, Nevada, requesting the substitution of DTV channel 20 for station KAME–TV's assigned DTV channel 22. DTV Channel 20 can be allotted to Reno, Nevada, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (39–35–04 N. and 119–47–51 W.). As requested, we propose to allot DTV channel 20 to Reno with a power of 50 and a height above average terrain (HAAT) of 189 meters.

DATES: Comments must be filed on or before January 16, 2001, and reply comments on or before January 31, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Joseph A. Godles, W. Kenneth Ferree, Goldberg, Godles, Wiener & Wright, 1229 Nineteenth Street, NW, Washington, DC 20036 (Counsel for Broadcast Development Corporation)

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–234, adopted November 22, 2000, and released November 24, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Nevada is amended by removing DTV Channel 22 and adding DTV Channel 20 at Reno.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–30364 Filed 11–28–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2591; MM Docket No. 00–237; RM–10006]

Radio Broadcasting Services; Window Rock, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Western Indian Ministries, Inc., licensee of Station KWIM, Channel 274C3, Window Rock, Arizona, requesting the substitution of Channel 285C2 for Channel 274C3 and modification of its license accordingly to provide an expanded coverage area FM service to that community. Additionally, in accordance with the requirements of Section 1.420(g)(2) of the Commission's Rules, if another interest is expressed in the proposed Class C2 allotment, equivalent Channel 251C2 is also available for allotment at Window Rock. Coordinates used for Channel 285C2 at Window Rock are those of the presently licensed site of Station KWIM, at coordinates 35–39–19 NL and 109–01–59 WL.

DATES: Comments must be filed on or before January 8, 2001, and reply comments on or before January 23, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Western Indian Ministries, Inc., c/o Timothy C. Cutforth, P.E., 965 S. Irving Street, Denver, CO 80219.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed RuleMaking, MM Docket No. 00–237, adopted November 8, 2000, and released November 17, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 274C3 and adding Channel 285C2 at Window Rock, Arizona.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–30365 Filed 11–28–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2604, MM Docket No. 00–87, RM–9870, RM–9961]

Radio Broadcasting Services; Brightwood, Madras, Bend and Prineville, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, in response to the counterproposal of Madras Broadcasting requesting the allotment of Channel 251C1 to Madras, OR, as the community's first local aural service, issues an Order to Show Cause to the licensee of Station KTWS(FM), Channel 252C3, Bend, OR, as to why its license should not be modified to specify operation on Channel 253C3. The counterproposal was filed in response to the proposed allotment of Channel 251C3 to Brightwood, OR. See 65 FR 34997, June 1, 2000. See **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be filed on or before January 8, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order to Show Cause, MM Docket No. 00–87, adopted November 8, 2000, and released November 17, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036. The Commission proposes the following channel changes to accommodate the allotment of Channel 251C1 to Madras, OR, at coordinates 44–50–02 NL; 120–45–55 WL: (1) the substitution of Channel 253C3 for Channel 252C3 at Bend, OR, at coordinates 44–04–41 NL; 121–19–57 WL, and the modification of Station KTWS(FM)'s license accordingly; (2) the substitution of Channel 255C3 for unoccupied and unapplied-for Channel 254C3 at Prineville, OR, at coordinates 44–13–30 NL; 120–46–30 WL.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Madras, Channel 251C1, by adding Channel 253C3 and removing Channel 252C3 at Bend, and adding Channel 255C3 and removing Channel 254C3 at Prineville.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–30366 Filed 11–28–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. NHTSA–2000–8057]

RIN 2127–AH87

Anthropomorphic Test Dummy; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the neck lateral calibration specifications for the SID/HIII dummy. This dummy is employed in side impact pole tests which assess the effectiveness of dynamically deployed head impact protection systems. In these tests, the subject vehicle is towed sideways into a pole in such a way that the vehicle impacts the pole at a point corresponding to the center of gravity of the head of a seated SID/HIII dummy. Data collected from these tests are used to evaluate the performance of the head impact protection system.

This document responds to a petition for rulemaking filed by the Alliance of Automobile Manufacturers. That petition indicates that the current neck lateral bending calibration corridor specified for the SID/HIII dummy is incorrectly defined. After reviewing the petition and various data, the agency is proposing that the corridor specifications be revised.

DATES: You should submit your comments early enough to ensure that

Docket Management receives them not later than January 16, 2001.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590.

You may call Docket Management at 202–366–9324. You may visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Stan Backaitis, Office of Crashworthiness Standards at 202–366–4912.

For legal issues, you may call Otto Matheke, Office of the Chief Counsel, at 202–366–2992.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 201, Head Impact Protection, provides a number of alternative performance requirements for manufacturers of vehicles with dynamically deployed interior head protection systems. One of these alternatives uses a test in which a vehicle is propelled sideways at a speed of 29 km/h (18 mph) into a 254 mm (10 inch) diameter rigid pole. A Part 572 Subpart M anthropomorphic test dummy is placed in the outboard front seat on the struck side of the vehicle.

The specifications for the Subpart M dummy, known as SID/HIII, were established by a final rule published in the **Federal Register** on August 4, 1998 (63 FR 41466). The SID/HIII is based on two other dummies: (1) The Part 572, Subpart F anthropomorphic test device (Side Impact Dummy or SID) that is used in testing under FMVSS 214, Side Impact Protection, and (2) the Part 572, Subpart E anthropomorphic test device (Hybrid III or HIII) that is used in testing under FMVSS 208, Occupant Crash Protection. The SID/HIII combines the head and neck of the Hybrid III with the torso and lower extremities of the Side Impact Dummy through the use of a redesigned neck to torso adapter bracket.

As the performance of the dummy is critical in any test, the specifications for the SID/HIII include calibration tests used to validate the characteristics of the individual device. One of these tests is the neck lateral bending corridor. It establishes maximum and minimum values for the dummy neck that it must meet when subjected to a calibration test in lateral impact direction.

B. Petition for Rulemaking

On July 28, 1999, the Alliance of Automobile Manufacturers (Alliance) submitted a Petition for Technical Correction indicating that the specified lateral impact neck corridor for the SID/HIII dummy does not reflect the neck stiffness of the Hybrid III dummy as originally specified by the SAE Side Impact Dummy Task Force (SIDTF) in the minutes of the Task Force meeting of April 15, 1989. According to the Alliance, subsequent to the April 5, 1989 meeting, the SIDTF made a transcription error when it drew up lateral calibration specifications for the Hybrid III neck. The Alliance stated that the erroneous calibration specifications were carried forward and incorporated by the SAE in the BioSID user manual in 1989. As the BioSid neck and the Hybrid III neck are identical and the BioSid user manual was the only publication available to the public containing the lateral neck calibration values, the erroneous values were used by NHTSA in rulemaking for the SID/HIII dummy.

The agency proposed the SID/HIII dummy on December 8, 1997 and adopted it into Part 572 as Subpart M on August 4, 1998. The SID/HIII dummy incorporated the erroneous neck specifications that were contained in the BioSID user manual. As a result of this error, the lateral calibration corridor specified a neck that was stiffer in bending in the lateral direction than in the flexion and extension directions. Existing biomechanical data indicates that the human neck is not stiffer in the lateral direction but actually has similar bending stiffness in both directions. The Alliance petition of July 28, 1999, based on recommendations from the SAE Dummy Test and Equipment Subcommittee (DTES), suggested that the lateral neck calibration corridor be revised so the allowable neck bending stiffness moment for the SID/HIII in the lateral direction would be limited to a range between 73 N-m (54 ft-lbs) and 97 N-m (72 ft-lbs).

After receiving the Alliance petition, the agency reviewed the data and methodology used by that organization to determine the adequacy of the recommended change to the lateral neck calibration corridor. NHTSA's analysis of the corridor, suggested by the Alliance, revealed inconsistencies between the Alliance proposed corridor and the corridor specifications recommended by the DTES after the DTES discovered and revised the earlier error. The agency found that the corridor suggested by the Alliance was broader than could be justified by biomechanical data and would result in necks that are likely to be too stiff as well as having a wide degree of variability. Following discussions between agency representatives and the Alliance regarding these problems, the Alliance submitted a letter to the agency on January 12, 2000, indicating that it wished to revise its petition of July 28, 1999, and substitute new corridor specifications. The specifications suggested by the Alliance on January 12, 2000, and the current specifications for the SID/HIII are presented below:

	Current SID/H III	Alliance suggestion
Maximum Rotation (degrees)	64–78	66–82
Decay time from max rotation to 0 (ms)	50–70	58–67
Time between max moment and max rotation (ms)	0–20	2–15
Max moment at occipital condyles (N-m)	88–108	73–88
Decay time from max moment to 0 (ms)	40–60	49–63

C. Proposed Rule

After careful consideration of the Alliance petition and the revised specifications suggested by the Alliance on January 12, 2000, HTSA is proposing to amend the lateral neck calibration corridor for the SID/HIII dummy. The agency's proposal adopts the recommendations submitted by the Alliance in its January 12, 2000 letter with the exception of (1) the decay time from maximum rotation to zero rotation and (2) the time between maximum moment and maximum rotation.

The agency proposal is based on the review of the calibration data submitted by the Alliance and the agency's own calibration tests on a number of Hybrid III necks. NHTSA's own test program

indicated that many of the specifications submitted by the Alliance in the January 12, 2000 were valid. However, the agency's testing also indicated that the upper time limits for the time between maximum moment and maximum rotation, and the decay time from max rotation to zero rotation should be increased by 1 ms from 15 ms to 16 ms and from 63 to 64 ms, respectively. Accordingly, NHTSA is proposing that the neck lateral calibration corridor for the SID/HIII dummy be amended to specify the following values:

	Current SID/H III	NHTSA proposal
Maximum Rotation (degrees)	66–82	66–82
Decay time from max totation to 0 (ms)	58–67	58–67
Time between max moment and max rotation (ms)	2–15	2–16
Max moment at occipital condyles (N–m)	73–88	73–88
Decay time from max moment to 0 (ms)	49–63	49–64

D. Comment Period

The agency notes that the SID/HIII is currently being used to test the compliance of dynamic head protection systems that are both in production vehicles and under development. Existing data indicate that the current neck lateral calibration corridor is inappropriate and results in a dummy that is not as biofidelic as one that is calibrated using the proposed corridor. NHTSA believes that the proposed calibration corridor, as a correction of a corridor that was developed in error, should be adopted as soon as possible. Similarly, the agency also believes that the changes it is now proposing will be generally accepted as valid and should not generate significant comment or controversy. We have therefore decided that in the interest of expediting this rulemaking action, that any and all comments should be submitted within 30 days of the publication on this proposal.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action has been determined not to be significant under the Department's regulatory policies and procedures.

This document proposes to amend 49 CFR part 572 by modifying the existing specifications for calibrating the dummy's neck to ensure that accurate and reliable data are generated in testing. If this proposed rule becomes final, it would affect only those businesses that choose to manufacture or test with the dummy. It does not impose any requirements on anyone.

We believe that the economic impacts of this proposal, if any, would be limited to the costs of recalibrating and perhaps modifying existing dummy necks. We estimate that these costs, if they arise, would be limited to less than $100 per dummy.

Because the economic impacts of this proposal are so minimal, no further regulatory evaluation is necessary.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) I hereby certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. This proposal would modify existing specifications for a dummy test device used by manufacturers if they decide to employ an optional test procedure under Standard 201. The costs associated with the changes to the neck lateral calibration corridor are minimal. Further, this rule primarily affects passenger car and light truck manufacturers which are not small entities under 5 U.S.C. 605(b). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). The agency estimates that there are at most five small manufacturers of passenger cars in the U.S. and no small manufacturers of light trucks, producing a combined total of at most 500 cars each year. These small manufacturers, if they choose to perform the optional side impact pole test that employs this particular test device, would have to use the proposed neck lateral calibration corridor when validating the dummy for use in testing. As noted above, the agency believes that any costs associated with the use of the proposed calibration corridor would be minimal. Further, most small entities do not perform full scale crash tests themselves but instead rely on vehicle manufacturers or test laboratories to perform such tests. Both manufacturers and test laboratories are likely to have recalibrated dummy necks readily available at no increased cost when performing testing for small manufacturers.

For these reasons, NHTSA believes that this final rule does not have a significant impact on any small business.

C. National Environmental Policy Act

NHTSA has analyzed this proposed amendment for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule has no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This proposal does not meet the definition of a Federal mandate because it does not impose requirements on anyone. In addition, annual

expenditures would not exceed the $100 million threshold.

F. Executive Order 12778 (Civil Justice Reform)

This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this proposed rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

The neck lateral calibration corridor that is the subject of this document was developed under the auspices of the SAE Dummy Test and Equipment Subcommittee. The following voluntary consensus standards have been used in developing the proposed neck lateral calibration corridor: SAE J211 Recommended Practice for Crash Tests Instrumentation, SAE J1460 Human Mechanical Response Characteristics, and ISO/TR 9790–2 -Road Vehicles-Anthropomorphic Side Impact Dummy-Part 2: Lateral Neck Impact Response Requirements to Assess Biofidelity of Dummy.

I. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This proposal is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and does not have a disproportionate effect on children. The proposed rule seeks to change the calibration values for a test dummy neck. Other than ensuring that the test dummy more accurately replicates the adult human neck in side impacts, the proposed rule has no impact on children.

Comments

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

2. On that page, click on ''search.''

3. On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may word search the Adobe pdf version of a comment by

clicking on the binocular symbol (Acrobat Find) and typing in a search term. You may also download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 572

Motor vehicle safety.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 572 as follows:

PART 572—ANTHROPOMORPHIC TEST DUMMIES

1. The authority citation for Part 572 would continue to read as follows:

Authority: 49 U.S.C. 332, 30111, 30115, 30117; and 30166 delegation of authority at 49 CFR 1.50.

Subpart M—Side Impact Hybrid Dummy 50th Percentile Male

2. 49 CFR Part 572 would be amended by revising § 572.113(b)(2), (b)(3) and (b)(4) to read as follows:

* * * * *

§ 572.113 Neck assembly.

* * * * *

(b) * * *

(2) The maximum rotation of the midsagittal plane of the head shall be 66 to 82 degrees with respect to the pendulum's longitudinal centerline. The decaying head rotation vs. time curve shall cross the zero angle between 58 to 67 ms after reaching its peak value.

(3) The moment about the x-axis which coincides with the midsagittal plane of the head at the level of the occipital condyles shall have a maximum value between 73 and 88 Nm. The decaying moment vs. time curve shall first cross zero moment between 49 and 64 ms after reaching its peak value. The following formula is to be used to calculate the moment about the occipital condyles when using the six-axis neck transducer:

$M = Mx + 0.01778 Fy$

Where Mx and Fy are the moment and force measured by the transducer and expressed in terms of Nm and N, respectively.

(4) The maximum rotation of the head with respect to the pendulum's longitudinal centerline shall occur between 2 and 16 ms after peak moment.

Issued on November 21, 2000.

Noble N. Bowie,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–30305 Filed 11–28–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 110800C]

Atlantic Highly Migratory Species Fisheries; Technical Gear Workshop; Postponement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Postponement of public meeting.

SUMMARY: NMFS announces the postponement of the technical gear workshop previously scheduled to discuss potential gear modifications and configurations for the Atlantic pelagic longline fishery.

FOR FURTHER INFORMATION CONTACT: Margo Schulze-Haugen or Tyson Kade at (301) 713-2347.

SUPPLEMENTARY INFORMATION: On November 21, 2000 (65 FR 69898), NMFS announced that it would conduct a workshop on December 12-13, 2000, at NMFS, Building 4 - Science Center, 1305 East-West Highway, Silver Spring, MD 20910. The purpose of the workshop is to allow fishermen, gear experts, sea turtle experts, and fishery managers to discuss possible measures, including gear and fishing method modifications, to reduce the incidental take and mortality of sea turtles in the Atlantic pelagic longline fishery. After announcing the workshop, NMFS received comment from fishermen that the scheduled dates posed a conflict with the active fishing period associated with the full moon. As participation by fishing vessel captains is an important aspect of this meeting, NMFS has agreed to reschedule the workshop. NMFS will announce a future date for this workshop in the **Federal Register**.

Authority: 16 U.S.C. 971 *et seq.*, and 16 U.S.C. 1801 *et seq.*

Dated: November 22, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–30418 Filed 11–28–00; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 65, No. 230
Wednesday, November 29, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–918–01–1610–DH–UCRB]

Interior Columbia Basin Ecosystem Management Project, Northern, Intermountain and Pacific Northwest Regions; States of Oregon, Washington, Idaho, Montana

AGENCY: Forest Service, USDA; Bureau of Land Management, USDI.

ACTION: Amended notice of intent to conduct planning and prepare an Environmental Impact Statement. Notification regarding the process to follow to request administrative review of the proposed decision for the Interior Columbia Basin Ecosystem Management Project (ICBEMP).

SUMMARY: The Bureau of Land Management and the U.S. Forest Service are jointly engaged in a land use plan amendment process, developing a management strategy for lands they administer. Both agencies' regulations provide for administrative review of the proposed decision before it is recorded. The responsible officials for both agencies have agreed to use one administrative review process in order to simplify the process for the public and for the agencies. The responsible officials further decided to use, as the single review process, the Bureau of Land Management's protest process. Using this single process allows the public to seek review from both agency heads with one request.

DATES: Protests of the ICBEMP proposed decision must be filed within 30 days of the date the Environmental Protection Agency publishes the notice of receipt of the final environmental impact statement (EIS) for the ICBEMP.

ADDRESSES: Protests of the ICBEMP proposed decision must be sent to the address that will be provided with the distribution of the final EIS and proposed decision. The final EIS and proposed decision will be sent to everyone who received or commented on the supplemental draft EIS, unless they ask to be removed from the mailing list. The final EIS and proposed decision will also be available via the internet (http://www.icbemp.gov).

FOR FURTHER INFORMATION CONTACT: Susan Giannettino, Project Manager, 304 North 8th St., Room 250, Boise, Idaho 83702, phone (208) 334–1770; or Geoff Middaugh, Deputy Project Manager, P.O. Box 2295, Walla Walla, Washington 99362, phone (509) 522–4033.

SUPPLEMENTARY INFORMATION: The Forest Service and Bureau of Land Management have been engaged in the Interior Columbia Basin Ecosystem Management Project—a land use plan amendment process—since 1994. The Bureau of Land Management planning regulations (43 CFR 1610) and the Forest Service planning regulations (36 CFR 219) both provide the public with the opportunity to request administrative review of a proposed land use plan decision. The Bureau of Land Management regulations describe a protest process (43 CFR 1610.5–2):

Any person who participated in the planning process and has an interest which is or may be adversely affected by the approval or amendment of a resource management plan may protest such approval or amendment. A protest may raise only those issues which were submitted for the record during the planning process.

The Forest Service regulations provide that (36 CFR 219.32(e)):

Where the Forest Service is a participant in a multi-agency decision subject to objection under this part, the responsible official and reviewing officer may waive the objection procedures of this part to adopt the administrative review procedure of another participating federal agency, if the responsible official and the responsible official of the other agencies agree to provide a joint response to those who have filed for administrative review of the multi-agency decision.

The Bureau of Land Management and the Forest Service are participating in a multi-agency decision. The responsible officials of the Forest Service and Bureau of Land Management have agreed to provide a joint response to those who file for administrative review of the proposed decision, which is scheduled to be distributed to the public in mid-December, along with the final EIS for the ICBEMP. The responsible officials of the Forest Service (the Regional Foresters of the Northern, Intermountain, and Pacific Northwest Regions) and the reviewing officer (the Chief of the Forest Service) waive the objection procedures under part 219.32 to adopt the administrative review procedure of the Bureau of Land Management. The reasons for this decision are as follows:

- The Forest Service and Bureau of Land Management jointly share the lead for the Interior Columbia Basin Ecosystem Management Project.
- The two agencies have gone jointly to the public for scoping, information-gathering, and review since the inception of the Project.
- Using one administrative review procedure lets the public request review from both agencies at one time, rather than having to make two separate, potentially redundant requests.
- Using two separate administrative review procedures, including potential changes in the proposed Project decision, could result in the two agencies' recording two different decisions. This result would fail to meet the original purpose of this action, which was to develop and analyze a strategy for management of lands administered by both the Forest Service and the Bureau of Land Management.

To request administrative review of the proposed decision for the Interior Columbia Basin Ecosystem Management Project use the following procedure:

- Put the protest in writing and file it with the Director of the Bureau of Land Management and the Chief of the Forest Service at the address that will be provided with the final EIS and proposed decision.
- The protest shall be filed within 30 days of the date the Environmental Protection Agency publishes the notice of receipt of the final environmental impact statement in the **Federal Register.** (This publication is expected to be in mid-December, 2000. The exact date for protests will be identified at that time.)
- The protest shall contain:

The name, mailing address, telephone number and interest of the person filing the protest.

A statement of the issue or issues being protested;

A statement of the part or parts of the amendment being protested;

A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and

A concise statement explaining why the responsible officials' decision is believed to be wrong.

The BLM Director and Forest Service Chief will promptly render a joint decision on the protest. The decision will be in writing and will set forth the reasons for the decision. The decision will be sent to the protesting party by certified mail, return receipt requested.

The joint decision of the Director and Chief shall be the final decision of the Department of the Interior and the Department of Agriculture. Reviewers who do not request administrative review of the proposed decision may not preserve their standing to litigate the final decision.

Dated: November 20, 2000.

Dale Bosworth,

Regional Forester, Northern Region, Forest Service.

Dated: November 17, 2000.

Martha Hahn,

State Director, Idaho, Bureau of Land Management.

[FR Doc. 00–30393 Filed 11–28–00; 8:45 am]

BILLING CODE 4310–66–M

DEPARTMENT OF AGRICULTURE

Forest Service

Comet Administrative Study EIS—Klamath National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) on a proposal to conduct an administrative study on 1,880 acres of National Forest System land (Matrix land allocation only) in the Salmon River watershed near the towns of Sawyers Bar and Forks of Salmon in Siskiyou County, California. The purpose of the proposal is to conduct the Comet Administrative Study that will examine the cause and effect of Klamath National Forest Land and Resource Management Plan (Forest Plan) modeled silvicultural prescriptions and associated harvest techniques on presence and relative abundance of Survey and Manage (SM) mollusks (special survey and manage requirements for species that are rare or uncommon).

DATES: Comments concerning the scope of the analysis should be received on or before December 29, 2000.

ADDRESSES: Send written comments to Jan Ford, Acting District Ranger, Salmon River Ranger District, 11263 N. Highway 3, Fort Jones, CA 96032. Electronic mail may be sent to r5__klamath__Comment@fs.fed.us. See the **SUPPLEMENTARY INFORMATION** section for additional information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Sue Stresser, EIS Team Leader, (530) 468–5351.

SUPPLEMENTARY INFORMATION: This Administrative Study will be accomplished through the following actions:

1. Collect pre-treatment information and data on mollusks using the approved survey strategy for the study.

2. Test stand treatments as follows:

(a) Green Tree Retention Prescription (GTR): Thirty-two stands with an average size of 15 acres have been chosen. The range of stand sizes varies from 4 to 32 acres. Half of these are north facing aspects (cool/moist). The remainder are south facing stands (warmer/drier). The treatments will be randomly applied with equal frequency (four treated and four as control for north aspects and the same for south aspects).

(b) Commercial Thin Prescription: Thirty-two stands with an average size of 18 acres have been chosen. The range of stand sizes varies from 6 to 69 acres. Half of these are north facing aspects (cool/moist). The remainder are south facing stands (warmer/drier). The treatments will be randomly applied with equal frequency (four treated and four as control for north aspects and the same for south aspects).

(c) Group Selection Prescription: Thirty-two stands with an average size of 26 acres have been chosen. The range of stand sizes varies from 8 to 50 acres. Half of these will be north facing aspects (cool/moist). The remainder will be south facing stands (warmer/drier). The treatments will be randomly applied with equal frequency (four treated and four as control for north aspects and the same for south aspects).

(d) No treatments will occur in control stands. Control stands will remain untreated through the life of the project (up to 10 years).

3. Apply logging systems to treatment stands in Item 2 above (see Table 1) as follows:

a. Conventional cable systems on half of the stands (24 total omitting the controls), including an equal number of group selection, GTR, and commercial thinning stands (half of each on north slopes and half on south slopes); and

b. Helicopter systems on the other half of the stands (24 total omitting controls), including an equal number of group selection, GTR, and commercial thinning stands (half of each on north slopes and half on south slopes).

4. Apply fuels treatment/site preparation methods to treatment stands in Item 2 above, using a combination of the following: hand pile and burn, lop/scatter, yard unutilized material, jackpot (burning concentrations of slash), and underburn.

5. Implement a combination of reforestation treatments, including planting, gopher baiting, and manual release.

6. Pre-commercial thin natural regeneration within treatment stands.

7. Implement the following transportation system improvements, including construction of temporary spur roads and landings, reconstruct portions of existing roads, and conduct road maintenance on existing system roads, as necessary for this administrative study.

8. Collect information and data on presence and relative abundance of SM mollusk species post-project, and for up to ten years after the completion of the project, according to the approved survey strategy.

9. Report findings after analysis is completed for each data collection.

This Administrative Study will include a one-time, site-specific Forest Plan amendment. Management Recommendations for SM mollusks and Del Norte Salamander will be waived in order to examine the effects of stand treatments, as described above, on mollusk species.

Purpose and Need

An important component of the Northwest Forest Plan Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl (ROD, 1994) is the facilitation of research activities to gather information and test hypotheses in a range of environmental conditions. Where appropriate, some research activities were expected to be exempted from the Standards and Guidelines of the ROD (ROD, page 15). The Northwest Forest Plan requires, through Standards

and Guidelines, the management of a number of species of plants and animals for which little information was available at the time the plan was authored.

The purpose of this study is to determine the effects of implementing Forest Plan modeled silvicultural prescriptions and associated harvest techniques on existing mollusk populations. It will also analyze long-term impacts, if any, and will study the recovery rate of these species if impacts are caused by treatments.

Many SM mollusks have been found in the Salmon River Watershed on the Klamath National Forest as a result of recent project-level and strategic surveys. These forested areas have experienced varying levels of human and natural disturbance (*e.g.,* timber harvest, wildfire, roads). The administrative study will be used to gather information on the impacts of various harvest techniques, logging systems, and associated treatments on mollusks where very little information exists. Completion of this administrative study may assist with the development of long-term land management options on the Klamath National Forest.

Decision To Be Made

Whether the U.S. Department of Agriculture, Forest Service, Klamath National Forest will implement this project as proposed, including a project-specific amendment to the Forest Plan.

Responsible Official

Margaret Boland, Forest Supervisor, USDA Forest Service, 1312 Fairlane Road, Yreka, California 96097 is the Responsible Official for making the recommendation whether to implement this administrative study or not. She will document her decision and rationale in a Record of Decision.

Public Involvement, Rationale, and Public Meetings

In October 2000, this administrative study was included in the Klamath National Forest's Fall 2000 Schedule of Proposed Actions (SOPA), which was posted on the Klamath National Forest's internet website and mailed to the SOPA mailing list. In November 2000, a scoping letter of the proposed administrative study was sent to potentially affected individuals and anyone who expressed interest in this study. This notice will invite public comment for a period of 90 days. Comments received will be included in the documentation for the EIS. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in, or affected by, the proposed administrative study.

While public participation in this analysis is welcome at any time, comments received within 45 days of the publication of this notice will be especially useful in the preparation of the Draft EIS. A public meeting associated with the project will be held to gain a better understanding of public issues and concerns. This meeting will be held in the late spring of 2001.

Information from the meetings will be used in preparation of the draft and final EIS. The scoping process will include identifying: potential issues, significant issues to be analyzed in depth, alternatives to the proposed action, and potential environmental effects of the proposal and alternatives.

Electronic Access and Filing Addresses

Comments may be sent by electronic mail (e-mail) to r5__klamath__Comment@fs.fed.us. Please reference the Comet Administrative Study on the subject line. Also, include your name and mailing address with your comments so documents pertaining to this project may be mailed to you.

Estimated Dates for Filing

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by November 2001. At that time, EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date of EPA publishes the Notice of Availability in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The Final EIS is scheduled to be completed by February 2002. In the Final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

The Reviewers' Obligation To Comment

The Forest Service believes it is important to give reviewers notice, at this early stage, of several court rulings related to public participation in the environmental review process. First, reviewers of Draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the Draft EIS stage but that are not raised until after completion of the Final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Margaret J. Boland,

Forest Supervisor, Klamath National Forest.

[FR Doc. 00–30400 Filed 11–28–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lassen National Forest, California; Mineral Forest Recovery Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent.

SUMMARY: The Forest Service intends to prepare an environmental impact statement (EIS) to analyze and disclose the environmental effects of implementing resource management activities that include fuelbreak construction consisting of a strategic system of defensible fuel profile zones (DFPZs), group selection harvests, and riparian restoration projects on the Almanor Ranger District in the Lassen National Forest. These activities are part

of a 5-year pilot project to test and demonstrate the effectiveness of certain resource management activities designed to meet ecologic, economic, and fuel reduction objectives on the Lassen National Forest as well as on the Plumas National Forest and on the Sierraville Ranger District of the Tahoe National Forest. This notice applies only to the Lassen National Forest; however, all three National Forests were named in the Record of Decision (ROD, August 1999) for the Herger-Feinstein Quincy Library Group (HFQLG) Forest Recovery Act Final Environmental Impact Statement (FEIS). The ROD amended the management direction in the Land and Resource Management Plans for these three National Forests. The need for the ROD and FEIS was generated from the Herger-Feinstein Quincy Library Group (HFQLG) Forest Recovery Act (Act) of October 21, 1998.

DATES: Comments concerning the scope of the analysis should be received in writing on or before December 29, 2000.

ADDRESSES: Send written comments to Susan Jeheber-Matthews, Almanor District Ranger, P.O. Box 767, Chester, CA, 96020.

FOR FURTHER INFORMATION CONTACT: Mary Lou Mini, Interdisciplinary Team Leader or Judy Welles, Interdisciplinary Team Silviculturist, telephone: (530) 258–2141.

SUPPLEMENTARY INFORMATION:

Proposed Action

To accomplish the purpose of the Herger-Feinstein Quincy Library Group (HFQLG) Forest Recovery Act, resource management activities included in the proposed Mineral Forest Recovery project and DFPZ construction, group selection harvests, and riparian restoration projects. The proposed project is located in Tehama County, California, within the Almanor Ranger District of the Lassen National Forest in all or portions of Sections 1–3, T.28N., R.3E., Sections 1–4, 9–15, 22–26, 33–36, T.29N., R.3E., Sections 3, 4, 6–10, 15–21, 28, 29, 31–33, T.29N., R.4E., Sections 26, 27, 34–36, T.30N., R.3E., and Section 31, T.30N., R.4E., MDM.

The Mineral Forest Recovery Project area is one of five sub networks established to implement a DFPZ network on the District. The purpose of DFPZs in this area is to reduce the number of acres that would be burned by high-intensity stand-replacing fires. DFPZs are needed in this area in order to improve suppression efficiency by creating an environment where wildfires would burn at lower intensities and where fire fighting production rates would be increased. DFPZs are strategically located strips of land on which forest fuels, both living and dead, have been modified in order to reduce the potential for a sustained crown fire and to allow fire suppression personnel a safer location from which to take action against a wildfire. Fuels treatment strategies would focus on the alteration or reduction of surface fuels, ladder fuels, and canopy closure in order to effectively alter fire behavior and severity. Treatment methods will include thinning timbered stands, hand or machine piling of excessive forest fuels, and prescribed fire. The Mineral Forest Recovery Project proposes to construct 3,700 acres of DFPZ's in the Mineral project area including an estimated 2,700 acres that would be thinned.

Group selection harvests would be implemented to promote diversity in stand age and structure. Root disease centers of dwarf mistletoe infected areas would be targeted for group selection, as well as those stands that are even-aged in structure. Some understocked areas would also be regenerated using the group selection prescription. Group selection would be implemented on an estimated 550 acres within the Mineral Forest Recovery Project area. Fuels treatment would occur on 460 acres within group selections.

New construction of permanent and temporary roads would be needed to economically access stands requiring treatment for DFPZ and group selection harvest. Within the project area, 5.9 miles of permanent new road construction and 5.6 miles of temporary road construction would be implemented for this purpose. New construction of permanent roads would be added to the Forest transportation system. Temporary roads would be obliterated upon completion of use.

Riparian restoration projects would include erosion control treatment on existing landings and skidtrails, and on eroding streambanks that are contributing sediment to the streams. Treatment of existing roads would be implemented as part of an overall riparian restoration strategy to reduce impacts caused by roads. Impacts include erosion and increased runoff from inadequately or poorly drained roads, especially those located close to streams and with poorly designed drainage structures and stream crossings. Road treatments would include road relocation (1.6 miles of new construction, all of which is included in the new construction mentioned above), reconstruction (9.8 miles of existing roads for DFPZ and group selection access), and decommissioning (12.2 miles). Reconstruction activities would also include improvement or relocation of three existing in-channel water sources.

Decision To Be Made

The decision to be made is whether to implement the proposed action as described above, to meet the purpose and need for action through some other combination of activities, or to take no action at this time.

Responsible Official and Lead Agency

The USDA Forest Service is the lead agency for this proposal. District Ranger Susan Jeheber-Matthews is the responsible official.

Tentative or Preliminary Issues and Possible Alternatives

An anticipated public issue with the Mineral Forest Recovery Project is the proposal to implement resource management activities within suitable California spotted owl habitat. In order to fully test the Herger-Feinstein Quincy Library Group Forest Recovery Act on the Almanor Ranger District (*e.g.,* implement contiguous DFPZs on the landscape), it is necessary to analyze and implement the resource management activities outlined in the Act within suitable habitat for the California spotted owl. The Mineral Forest Recovery Project proposed action includes projects within suitable habitat.

The Record of Decision for the Herger-Feinstein Quincy Library Group Forest Recovery Act FEIS stated that California spotted owl habitat would be avoided at the site-specific project level until a new California spotted owl habitat management strategy is released. The decision to implement resource management activities within suitable owl habitat in the Mineral Forest Recovery Project area will be based upon one or more of the following three actions:

(1) A decision is made on the Sierra Nevada Conservation Framework (that would amend the Lassen NF Land and Resource Management Plan) that defines a new owl strategy and allows the implementation of resource management activities as outlined in the Act, or;

(2) A new California spotted owl viability assessment is completed providing direction encompassing the species' range and the Lassen NF Land and Resource Management Plan is amended to include the new owl strategy, or;

(3) A site-specific California spotted owl strategy would be developed and implemented for this project resulting in

a non-significant amendment to the Lassen NF Forest Plan.

Alternatives currently being considered for the Mineral Forest Recovery Project include: (a) No action; (b) the proposed action as outlined above, and; (c) an alternative, based on the proposed action, that does not enter into suitable California spotted owl habitat.

Public Involvement

Comments from the public and other agencies will be used in preparation of the draft EIS. The scoping process will be used to identify questions and issues regarding the proposed action. An issue is defined as a point of dispute, debate, or disagreement relating to a specific proposed action based on its anticipated effects. Significant issues brought to our attention are used during an environmental analysis to develop alternatives to the proposed action. Some issues raised in scoping may be considered non-significant because they are: (1) Beyond the scope of the proposed action and its purpose and need; (2) already decided by law, regulation, or the Land and Resource Management Plan; (3) irrelevant to the decision to be made; or (4) conjectural and not supported by scientific or factual evidence.

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS.

Identification of Permits or Licenses Required

No permits or licenses have been identified to implement the proposed action.

Estimated Dates for Filing

The draft EIS is expected to be filed with the Environmental Protection Agency and available for public review in March 2001. The comment period on the draft EIS will be 45 days from the date of the Environmental Protection Agency publishes the notice of availability of the draft EIS in the **Federal Register**.

The Reviewers Obligation To Comment

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft statements must structure their participation in the environmental review of the proposal so that is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningful consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulation of implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: November 16, 2000.

Edward C. Cole,

Forest Supervisor.

[FR Doc. 00–30017 Filed 11–28–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent to Seek Approval to Conduct an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intent of the National Agricultural Statistics Service (NASS) to request approval for a new information collection, the 2002 Census of Agriculture Screening.

DATES: Comments on this notice must be received by February 3, 2001 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, Room 4117 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2001, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: 2002 Census of Agriculture Screening.

Type of Request: Intent to Seek Approval to Conduct an Information Collection.

Abstract: The Census of Agriculture conducted every 5 years is the primary source of statistics concerning the nation's agricultural industry and provides the only basis for consistent, comparable data at the county, state, and national levels. To ensure that only active farms are included in the 2002 Census of Agriculture, operations on the census mail list that have an unknown farm status will be mailed a ''screener'' postcard prior to the full census. Response to the postcard will determine the operation's eligibility for the full census questionnaire. Identifying and removing non-farms from the census mail list will significantly reduce respondent burden and cost for the census. The screener postcard will be used in all states. Initial mail out is planned for late May 2002 with a follow-up mailing to non-respondents 6 weeks later. Response to this inquiry will be required by law under 7 U.S.C. 2204g. A voluntary, small-scale test will be conducted in May of 2001 to evaluate wording and the effect on the mail list. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: This information collection consists of a letter and self-mailing postcard with six questions. Public reporting burden will be 2 minutes per refusal (non-response), 3 minutes per screen-out (questions 1–4, 6=No), and 4 minutes per positive response (question 5).

Respondents: Farm and ranch operators.

Estimated Number of Respondents: 751,500 (mail-out).

Estimated Total Annual Burden on Respondents: 40,080 hours.

Copies of this information collection and related instructions can be obtained

without charge from Ginny McBride, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Ginny McBride, Agency OMB Clearance Officer, U.S. Department of Agriculture, Room 5330B South Building, 1400 Independence Avenue SW, Washington, DC 20250–2009 or *gmcbride@nass.usda.gov.* All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC., November 9, 2000.

Rich Allen,

Associate Administrator.

[FR Doc. 00–30426 Filed 11–28–00; 8:45 am]

BILLING CODE 3410–20–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: November 14, 2000, 1:15 p.m.–4:45 p.m.; November 15, 2000, 8 a.m.–2 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or John Lindburg at (202) 401–3736.

Dated: November 2, 2000.

Carol Booker,

Legal Counsel.

[FR Doc. 00–30569 Filed 11–27–00; 3:53 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112100C]

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Executive Committee, Law Enforcement Committee, and Demersal Species Committee meeting as a Council Committee of the Whole, together with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board will hold public meetings.

DATES: The meetings will be held on Tuesday, December 12, to Thursday, December 14, 2000.

ADDRESSES: The meetings will be held at the Trump Plaza Hotel, The Boardwalk and Mississippi Avenue, Atlantic City, NJ; telephone: 609-441-2708.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: 302-674-2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302-674-2331, ext. 19.

SUPPLEMENTARY INFORMATION:

Dates and Times of Meetings

Tuesday, December 12, 2000, 8:30 a.m. until 5 p.m.-- the Council will meet with the ASMFC Summer Flounder, Scup, and Black Sea Bass Board.

Wednesday, December 13, 2000, 8:30 - 11 a.m.-- the Council will meet with the ASMFC Summer Flounder, Scup, and Black Sea Bass Board.

December 13, 2000, 11 a.m. until 1:30 p.m.-- there will be an Information & Education Program.

December 13, 2000, 1:30 - 5:30 p.m.-- the Council will convene.

Thursday, December 14, 2000, 8 - 9 a.m.-- the Executive Committee will meet.

December 14, 2000, from 8 - 9 a.m.-- the Law Enforcement Committee will meet concurrently.

December 14, 2000, 9 a.m. until 1 p.m.-- the Council will meet.

Agenda items for this meeting are: Review and discuss Monitoring Committee recommendations and approve recreational management measures for 2001 for the summer flounder, scup, and black sea bass recreational fisheries; review public comments, review and discuss Framework 2 management measures regarding conservation equivalency (Meeting 1), discuss and prioritize 2001 fishery management plan (FMP) actions for the summer flounder, scup, and black sea bass fisheries; review and discuss Joint Monkfish Committee's recommendations on monkfish management measures, develop and approve management measures for 2001/02 monkfish fishery; review and evaluate position paper for Amendment 9 to the Squid, Mackerel, Butterfish FMP; review and discuss Joint Dogfish Committee's recommendations on spiny dogfish management measures, develop and approve management measures for 2001/01 spiny dogfish fishery; review and discuss the New England Council's request for opportunity to comment on the Council's annual specifications, review 2001 grant application, review 2001 Annual Work Plan; review Coast Guard/Law Enforcement Awards Program actions; review and approve proposed quota set-aside action; hear organizational and committee reports, and if available, comment on NMFS proposed rule regarding regulations impacting the summer flounder, scup, and black sea bass fisheries in 2001. During the Regional Administrator's Report there will be time to take public comment on Rutgers University's Exempted Fishing Permits application, *i.e.,* mesh selectivity studies.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those

issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: November 22, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–30362 Filed 11–28–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112100D]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Committee and Scientific and Statistical Committee in December, 2000 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will held between Monday, December 18 and Tuesday, December 19, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Newburyport, MA and Portland, ME. See **SUPPLEMENTARY INFORMATION** for specific locations.

FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978)465-0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Monday, December 18, 2000, 9:30 a.m. and Tuesday, December 19, 2000, 8:30 p.m.- Groundfish Oversight Committee Meeting

Location: Holiday Inn By the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775-2311.

The Groundfish Oversight Committee will continue developing its recommendations for management alternatives for Amendment 13 to the Northeast Multispecies Fishery Management Plan. This will include recommendations on rebuilding programs, measures to address capacity issues, and the four broad approaches to management that are under consideration (status quo, adjustments to the status quo, area management, and sector allocation). The committees' recommendations will be reviewed by the Council at a future date. After approval by the Council, the proposed alternatives will be analyzed and a draft Supplemental Environmental Impact Statement and public hearing document will be prepared. The Committee will meet in a closed session to review advisory panel applications.

The Committee will also identify management alternatives for a framework adjustment to reduced discards of Gulf of Maine cod and ensure mortality objectives are met. The initial meeting for this framework adjustment will be the January 23-25, 2000 Council meeting. The final meeting will not be scheduled until after receipt of an updated Gulf of Maine cod assessment in summer, 2001. Finally, the committee will receive a report from the state of Maine on an experimental halibut fishery.

TUESDAY, DECEMBER 19, 2000, 10 A.M. - Scientific and Statistical Committee

Location: New England Fishery Management Council office, 50 Water Street, Mill 12, Newburyport, MA 01960; telephone: (978) 465-0492.

Develop priorities in terms of how the committee might consider or handle the following issues or questions in the next year: review management reference points for monkfish; review management reference points for selected groundfish species; identify scallop assessment, science and management issues that should be addressed in the Council's management of scallops; review of skate overfishing definitions (to be developed); discuss biological-toxin issues such as questions about whether chemical contaminants affect the reproductive potential, survivability, and recruitment of Council-managed species; discuss questions about whether the ecosystem can support all stocks at B_{msy} simultaneously and the feasibility of a single control rule for the entire multispecies fishery rather than for individual stocks; review of the monkfish assessment update (to be done by the Monkfish Plan Development Team); review a DNA study about monkfish stock delineation. The committee will also elect a Chair and Vice-Chair.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: November 22, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–30420 Filed 11–28–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111700A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of modifications to existing permits (1113).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has issued modifications to scientific research permits to: Dr. Cheryl Woodley, NOS-Marine Forensics Laboratory - Charleston, SC (1113).

ADDRESSES: For permit 1113: Endangered Species Division, Office of

Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD, 20910 301-713-1401.

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Silver Spring, MD (ph: 301-713-1401, fax: 301-713-0376, e-mail: Terri.Jordan@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Species Covered in This Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Sea Turtles

Green turtle (*Chelonia mydas*), Hawksbill turtle (*Eretmochelys imbricata*), Kemp's ridley turtle (*Lepidochelys kempii*), Leatherback turtle (*Dermochelys coriacea*), Loggerhead turtle (*Caretta caretta*), and Olive ridley turtle (*Lepidochelys olivacea*).

Fish

All listed ESUs of Chinook salmon (*Oncorhynchus tshawytscha*), Chum salmon (*Oncorhynchus keta*), Coho salmon (*Oncorhynchus kisutch*), Sockeye salmon (*Oncorhynchus nerka*), and Steelhead Trout(*Oncorhynchus mykiss*).

Permits and Modifications Issued

NMFS received an application from Dr. Cheryl Woodley, of NOS - Marine Forensics Laboratory to modify research permit ı1113 on August 23, 2000. The applicant currently possesses a permit authorizing the possession of tissue samples from ESA-listed non-marine mammal and non-reptilian species under NMFS jurisdiction associated with genetic research studies and support of law enforcement actions. Law enforcement personnel have an ongoing need for scientific assistance in cases concerning endangered, protected, and managed marine species. The Marine Forensics Center provides technical/scientific assistance to a variety of law enforcement agencies including NMFS Enforcement, U.S. Customs, U.S. Fish and Wildlife Service, and state wildlife enforcement agencies. Forensics analyses generally involve a biochemical or genetic test when a comparison is made between evidence and voucher samples. Voucher samples which are used in a forensics analysis are collected and maintained under strict criteria that includes documentation (species identification form) from the expert who has authenticated the samples; a chain of custody which originates with the sample collection; and storage under secure conditions. The research will provide species identifications and is expected to extend to addressing other critical genetics information needs that will allow monitoring of recovery, characterization of genetic stocks and various aspects of genetic health for the species.

The applicant is not to conduct any field collection exercises to obtain the samples. All of the samples must be obtained from other previously authorized activities (permitted scientific research activities, or specimens confiscated by law enforcement authorities) and documented as described above.

Although the activities proposed by the applicant will not result in the take of a listed species, NOS - Forensics center has requested a permit to allow them to maintain tissues of species that were taken in violation of the ESA that may be given to them by law enforcement authorities.

Modification ı1 requests that marine reptile species under NMFS jurisdiction be added to the authorized species covered under this permit. NMFS has also added newly listed ESUs of Pacific Salmon to the permit per permit special condition 2.e. Modification ı1 to Permit 1113 was issued on November 9, 2000, authorizing take of listed species. Permit expires December 31, 2003.

Dated: November 22, 2000.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–30419 Filed 11–28–00; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

November 21, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the commissioner of customs adjusting limits.

EFFECTIVE DATE: November 29, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 57865, published on October 27, 1999.

Richard B. Steinkamp,

Chairman, Committee for the implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 21, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 21, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on

January 1, 2000 and extends through December 31, 2000.

Effective on November 29, 2000., you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Sublevels with the aggregate:	
300/301	11,065,911 kilograms.
338/339/638/639	2,314,339 dozen.
350	246,015 dozen.
363	35,405,752 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–30238 Filed 11–28–00; 8:45 am]

BILLING CODE 3510–DR–M

DELAWARE RIVER BASIN COMMISSION

Notice of Proposed Rulemaking; Proposed Amendment to the Delaware River Basin Commission's Water Code and Comprehensive Plan To Establish Water Usage Reporting Requirements

AGENCY: Delaware River Basin Commission.

SUMMARY: The Delaware River Basin Commission (''Commission'') will hold a public hearing to receive comments on proposed amendments to its Water Code and Comprehensive Plan to establish water usage reporting requirements for source water withdrawals and water service. The Commission established source metering, recording, and reporting requirements in 1986 for withdrawals of surface or ground water in excess of an average of 100,000 gallons per day over a 30-day period, but it did not specify the types of information to be reported. The Commission established service metering and recording requirements in 1987 for purveyors meeting the same volume threshold, but it did not require them to report service by use category. Thus, key pieces of information are missing and reported data are inconsistent among the states, impeding the Commission's ability to perform critical water use analyses. The Commission now proposes to amend its regulations to institute reporting requirements that ensure it has the source and service information needed to evaluate how and where water is being used in the basin. Much of the data proposed to be collected already are being collected by the states. The proposed amendment addresses the existing data gaps and will greatly facilitate the Commission's water use evaluations.

The existing regulations (DRBC Water Code Sections 2.50.1 and 2.50.2), the proposed amendment (proposed Water Code Section 2.50.3), and supplemental information are posted on the Delaware River Basin Commission web site at *http://www.drbc.net.*

DATES: The public hearing will be held on Tuesday, January 9, 2001 during the Commission's regular business meeting. The meeting will begin at 1:00 p.m. and continue until all those present who wish to testify are afforded an opportunity to do so. Persons wishing to testify at the hearing are asked to register in advance with the Commission Secretary.

The deadline for submission of written comments will be December 20, 2000.

ADDRESSES: The public hearing will be held at the Sykes Student Union, Rosedale Avenue, West Chester University, West Chester, Pennsylvania. Directions to that location will be posted on the Commission's web site, *http://www.drbc.net,* in December 2000. Written comments should be submitted to Pamela M. Bush, Delaware River Basin Commission, P.O. Box 7360, West Trenton, NJ 08628–0360.

FOR FURTHER INFORMATION: Please contact Esther Siskind at 609–883–9500 ext. 202 with questions about the proposed amendment, and Pamela M. Bush at ext. 203 with questions about the rulemaking process.

Dated: November 22, 2000.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 00–30401 Filed 11–28–00; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

(Docket No. EA–191–A)

Application to Export Electric Energy; Sempra Energy Trading Corp.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Sempra Energy Trading Corp. (SET) has applied for renewal of its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before December 29, 2000.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On November 10, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA–191 authorizing SET to transmit electric energy from the United States to Canada as a power marketer using the international electric transmission facilities owned and operated by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Co., Inc., Minnkota Power, New York Power Authority, Niagara Mohawk Power Corp., Northern States Power, and Vermont Electric Transmission Company. That two-year authorization expired on November 10, 2000.

On October 30, 2000, SET filed an application with FE for renewal of this export authority and requested that the authorization be granted for a five-year term and that the international transmission lines owned by Long Sault, Inc. be added to the list of authorized export points.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the SET request to export to Canada should be clearly marked with Docket EA–191–A. Additional copies are to be filed directly with Michael A. Goldstein, Esq., Senior

Vice President & General Counsel, Sempra Energy Trading Corp., 58 Commerce Road, Stamford, CT 06902.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order No. EA–191. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–191 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Electricity,'' from the Regulatory Info menu, and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC., on November 21, 2000.

Anthony Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 00–30407 Filed 11–28–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Availability of Solicitation

AGENCY: Idaho Operations Office, Department of Energy.

ACTION: Notice of availability of solicitation—biobased products industry education initiative.

SUMMARY: The U.S. Department of Energy, Office of Industrial Technologies, is seeking applications from private and public institutions of higher learning to promote multidisciplinary education and training programs for graduate students at the Masters or Ph.D. levels in the area of biobased products.

The emerging biobased products industry uses crops, trees, residues, and wastes to make chemicals and a large range of everyday consumer goods, like plastics, paints and adhesives. Contributions to this new industry would come from a wide range of traditional academic programs including: biology, molecular and micro-biology, genomics, plant physiology, fermentation sciences, agronomy, crop production, forestry, chemistry, chemical engineering and other engineering disciplines, and polymer and material science. These examples are cited for illustrative purposes only and are not intended to limit the academic programs to just those listed. This solicitation seeks to encourage the widest possible range of creative approaches.

DATES: The deadline for receipt of applications is 3 p.m. MDT January 17, 2001.

ADDRESSES: Applications should be submitted to: Procurement Services Division, U.S. Department of Energy, Idaho Operations Office, Attention: Marshall Garr [DE–PS07–00ID13962], 850 Energy Drive, MS 1221, Idaho Falls, Idaho 83401–1563.

FOR FURTHER INFORMATION CONTACT: Marshall Garr, Contract Specialist, at *garrmc@id.doe.gov*, telephone (208) 526–1536.

SUPPLEMENTARY INFORMATION: The objective of this new education initiative is to produce graduates who can enter the complex biobased products industry and effectively integrate knowledge from the wide range of technologies that are necessary for this industry to grow. U.S. universities and colleges are encouraged to design a comprehensive, multidisciplinary curriculum to achieve such a goal from an educational perspective and simultaneously allow the student to gain a hands-on experience through the implementation of an individual relevant research program. It is expected that the student, under the major professor's tutelage will conduct a research program that will make substantive contributions to the biobased products industry. It is encouraged for the students to interact with industry in their academic and research program.

Graduates will eventually be expected to contribute to improving the efficient utilization of energy in this new industry and enhancing the environmental quality of the surrounding land, air and water.

The statutory authority for this program is the Federal Non-Nuclear Energy Research & Development Act of 1974 (Pub L. 93–577). DOE anticipates approximately 4–5 grant awards will be made for up to $125,000 each a year for a maximum of three years in duration. These grants will cover both the costs for establishing a new cross-cutting academic and research program in this field as well as full stipends for 2 or so deserving graduate students at the Masters or Ph.D. level. The awards will be used for the academic year starting in the fall of 2001.

The issuance date of Solicitation No. DE–PS07–01ID14037 will be November 27, 2000. The solicitation will be available in full text via the Internet at the following address: *http://www.id.doe.gov /doeid/psd/proc-div.html.* Technical and non-technical questions should be submitted in writing to Marshall Garr by e-mail *garrmc@id.doe.gov,* or facsimile at 208–526–5548 no later than December 12, 2000.

Issued in Idaho Falls on November 21, 2000.

R. Jeffrey Hoyles,

Director, Procurement Services Division.

[FR Doc. 00–30406 Filed 11–28–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Idaho Operations Office; Supporting Industries

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of availability of financial assistance solicitation.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is seeking applications for cost-shared research and development of technologies which will reduce energy consumption, reduce environmental impacts and enhance economic competitiveness of two or more of the following Industry of the Future Sectors: Aluminum, Steel, Forest Products, Glass, Agriculture, Chemicals, Metal Casting, Mining, and Petroleum Refining. The research is to address research priorities identified in Technology Roadmaps developed for the following Supporting Industries: Heat Treating, Forging, Welding, Industrial Process Heating and Advanced Ceramics.

DATES: The issuance date of Solicitation Number DE–PS07–01ID14026 will be on or about November 20, 2000. The deadline for receipt of applications will be approximately on February 7, 2001.

ADDRESSES: The solicitation in its full text will be available on the Internet at the following URL address: *http://www.id.doe.gov/doeid/PSD/proc-div.html* or *http://e-center.doe.gov.* Applications should be submitted to: Seb Klein, Procurement Services Division, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1221, Idaho Falls, Idaho 83401–1563.

FOR FURTHER INFORMATION CONTACT: Seb Klein, Contract Specialist, kleinsm@id.doe gov.

SUPPLEMENTARY INFORMATION: The statutory authority for the program is the Federal Non-Nuclear Energy Research and Development Act of 1974

(Pub. L. 93–577). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086.

R.J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 00–30405 Filed 11–28–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–11–001]

Arkansas Western Pipeline, L.L.C.; Notice of Compliance Filing

November 22, 2000.

Take notice that on November 17, 2000, Arkansas Western Pipeline, L.L.C. (AWP) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute First Revised Sheet No. 28, Substitute Original Sheet No. 28A, and Substitute Original Sheet No. 60B, to be effective November 1, 2000.

AWP asserts that the purpose of this filing is to comply with the Commission's order issued October 27, 2000, in Docket No. RP01–11–000.

AWP states that it is filing to remove from its tariff provisions providing for the imposition of transportation charges for imbalance netting and trading pursuant to the directive of the Commission's order in this proceeding.

AWP further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30346 Filed 11–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–544–002]

Carnegie Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 22, 2000.

Take notice that on November 16, 2000, Carnegie Interstate Pipeline Company (CIPCO) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet to become effective October 1, 2000:

First Revised Sheet No. 75

CIPCO states that the purpose of this filing is to comply with the Commission's Order issued on October 26, 2000. This sheet was inadvertently not included in the November 13, 2000 filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30360 Filed 11–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–111–000]

Chandeleur Pipe Line Company; Notice of Compliance Filing

November 22, 2000.

Take notice that on November 17, 2000, Chandeleur Pipe Line Company tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective December 20, 2000:

First Revised Sheet No. 51
Second Revised Sheet No. 52

Chandeleur Pipe Line Company asserts that the purpose of this filing is to comply with the Commission's Order No. 587–L, Docket No. RM96–1, et al. issued June 30, 2000, 91 FERC ¶ 63,350, and the Commission's Order issued October 27, 2000, Docket No. RM96–1–014 et al., 93 FERC ¶ 61,093.

Chandeleur is filing tariff sheets implementing Imbalance Netting and Trading tariff provisions per 18 CFR 284.12(c)(2)(ii) adopted in Commission Order No. 587–G, issued April 16, 1998, 83 FERC ¶ 61,029.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30359 Filed 11–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–410–000]

Consumers Energy Company; Notice of Filing

November 22, 2000.

Take notice that on November 9, 2000, Consumers Energy Company (Consumers) tendered for filing a Facilities Agreement between Consumers and SEI Michigan, L.L.C. [SEI] (Agreement). Under the Agreement, Consumers is to provide electrical connection facilities between a generating plant to be built by SEI and Consumers transmission system. Consumers requested that the Agreement be allowed to become effective October 4, 2000.

Copies of the filing were served upon SEI and the Michigan Public Service Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 30, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30356 Filed 11–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–351–002]

Florida Gas Transmission Company; Notice of Compliance Filing

November 22, 2000.

Take notice that on November 14, 2000, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, effective December 1, 2000:

Fourth Revised Sheet No. 650
Third Revised Sheet No. 651
Third Revised Sheet No. 652
Third Revised Sheet No. 653
Fourth Revised Sheet No. 654

FGT states that on June 5, 1999 FGT filed revised tariff sheets to reflect the certification of the Data Verification Committee (DVC) of the ''Index of Requirements by End Use Priority for the 12 Month Period Ending June 30, 1998.'' The DVC certification is pursuant to Section 17.A.4 of the General Terms and Conditions of the FGT FERC Gas Tariff, which requires (i) that shippers submit data showing usage of Priority 1 and/or Priority 2 Exempt Uses for a one-year period ending every third July 31 and (ii) that the DVC certify the volumes which qualify as Priority 1 or Priority 2 Exempt Uses. On July 7, 1997 Coronet Industries, Inc. (Coronet) and U.S. Agri-Chemicals Corporation (US Agri-Chem) jointly filed a protest objecting to the DVC's reading of the tariff to exclude agricultural uses having alternative fuel capability on August 29, 1979 and requesting that their entire usage be included as a Priority 2 Exempt Use. Coronet and US Agri-Chem also objected to the DVC decision to allow shippers having no growth to use existing Exempt Use data collected for the period for July 1, 1994 to June 31, 1995 in lieu of resubmitting actual daily average gas usage for the period July 1, 1997 to June 30, 1998. On July 16, 1999 FGT filed a response to the Protest.

Also, FGT states that on July 23, 1999 the Commission issued its ''Order Accepting and Suspending Tariff Sheets Subject to Refund and Establishing a Briefing Schedule.'' Coronet/US Agri-Chem and FGT filed Initial Briefs on August 12, 1999 and Reply Briefs on August 23, 1999. On September 15, 2000 the Commission issued its ''Order on Briefs.'' The Commission determined that the DVC was correct in its decision to exclude agricultural uses with alternate fuel capability on August 29, 1979. However, the Commission determined that it was inappropriate to utilize Exempt Use data from the prior data collection. The Commission required the collection of actual data for the 12-month period ending in June 30, 1998.

And, FGT states that by letter dated September 27, 2000, FGT gave notice that customers were required to submit actual end use data pursuant to the Commission's September 15, 2000 Order. This data was submitted and on November 2, 2000 the DVC met to vote on the certification of requirements.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30341 Filed 11–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–31–000]

Kern River Gas Transmission Company; Notice of Application

November 22, 2000.

On November 15, 2000, Kern River Gas Transmission Company (Kern River), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP01–31–000 an application pursuant to Section 7 of the Natural Gas Act (NGA) and the Commission's Rules and Regulations for a certificate of public convenience and necessity authorizing Kern River to construct and operate

facilities required to expand its transportation capacity from Wyoming to California to serve 124,500 Mcf of new firm, long-term capacity, commencing May 1, 2002. Kern River requests an up-front determination that the project qualifies for rolled-in rate treatment, and for approval of a pro forma tariff provision establishing an electric compressor fuel surcharge and approval of its proposed accounting treatment for certain expansion costs, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Kern River proposes to install the following facilities: (1) Three new compressor stations, the Elberta Compressor Station, in Utah County, Utah, the Veyo Compressor Station in Washington County, Utah, and the Daggett Compressor Station in San Bernardino County, California; (2) an additional compressor unit at the existing Muddy Creek Compressor Station in Lincoln County, Wyoming; (3) restaging of the compressor at the existing Fillmore Compressor in Millard County, Utah; and (4) upgrades of the existing Opal Meter Station in Lincoln County, Wyoming and the Wheeler Ridge Meter Station in Kern County, California. It is indicated that the proposed compression facilities will add a total of 49,500 horsepower to the Kern River system at a cost of approximately $80 million.

Kern River states that the proposed expansion facilities are designed to accommodate the 124,500 dt per day of commitments for new firm service from Wyoming to California under four long-term (10- and 15-year) agreements resulting from a recent open season. It is stated that Kern River in the open season solicited requests for capacity turnback, but received no offers to release capacity. Kern River also states that the expansion transportation agreements are subject to the applicable extended term (ET) rates under the ET rate program recently approved for future implementation on the Kern River system. Kern River estimates that the rolled-in effect of the proposed expansion will be an approximately 4 to 6 percent reduction in otherwise applicable rates for existing shippers, partially offset by an increase in fuel reimbursement obligations as a result of the added compression. It is indicated that, pursuant to a rate settlement obligation, Kern River will submit a timely compliance filing to adjust its rates effective with the in-service date of the expansion to reflect the beneficial impact of the expansion project.

It is also stated that the proposed California compressor station will have an electric motor-driven compressor unit. To ensure recovery of the associated actual electric fuel costs from its shippers flowing gas through that point, Kern River proposes an electric compressor fuel surcharge under its tariff. It is indicated that, based on the stated assumptions for electricity costs, the initial surcharge is $0.0051 per dt of service flowing through that station.

Kern River also states that the $800,000 estimated cost to restage the existing compressor unit at the Fillmore Compressor Station will be expensed consistent with the FERC's Gas Plant Instructions in Part 201 of the Commission's Regulations. Kern River requests approval to amortize the restaging expense over 15 years, consistent with the contract terms applicable to most of the expansion capacity. It is also indicated that use of the approved ET rate levelization methodology for the proposed roll-in results in the new regulatory depreciation rates shown in Exhibit O of the application. Kern River requests that, since the total debt-related depreciation expenses still will be recovered over the primary terms of the service agreements, it should be permitted to continue accounting for the differences between its book depreciation and its regulatory depreciation as a regulatory asset or liability, with amortization over the primary terms of the underlying service agreements.

Kern River avers that the expansion shippers require service by May 1, 2002, in order to serve the fuel requirements of new and existing electric power generation facilities in California, and that the new facilities will require seven months to construct.

Questions regarding the details of this proposed project should be directed to Gary Kotter, Manager, Certificates, at (801)–584–7117, or in writing to his attention at Kern River Gas Transmission Company, P.O. Box 58900, Salt Lake City, Utah 84158.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before December 13, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed

project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 00–30355 Filed 11–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–628–001]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Compliance Filing

November 22, 2000.

Take notice that on November 17, 2000, Kinder Morgan Interstate Gas Transmission LLC, (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–B, the following sheet, with an effective date of November 1, 2000:

Sub. First Revised Sheet No. 54A

KMIGT states that the filing is being filed in compliance with the Commission's Order dated October 25, 2000 in this docket.

KMIGT states that it has served copies of the filing upon the company's transportation service and storage customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–30350 Filed 11–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–433–001]

Northern Natural Gas Company; Notice of Compliance Filing

November 22, 2000.

Take notice that on November 15, 2000, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariffs, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective on November 3, 2000:

Fifth Revised Volume No. 1
Third Revised Sheet No. 7
Original Volume No. 2
Ninth Revised Sheet No. 1A.2
38 Revised Sheet No. 1C.a
Second Revised Sheet No. 2144

Northern states that the above sheets represent cancellation of Rate Schedule T–44 from Northern's Original Volume No. 2 FERC Gas Tariff, and its associated deletion from the Table of Contents in Northern's Volume Nos. 1 and 2 tariffs.

Northern states that copies of the filing were served upon the company's customers and interested state Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30343 Filed 11–28–00; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–10–001]

Ozark Gas Transmission, L.L.C.; Notice of Compliance Filing

November 22, 2000.

Take notice that on November 17, 2000, Ozark Gas Transmission, L.L.C. (Ozark) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, to be effective November 1, 2000:

Substitute First Revised Sheet No. 104A
Substitute First Revised Sheet No. 105

Ozark asserts that the purpose of this filing is to comply with the Commission's order issued October 27, 2000, in Docket No. RP01–10–000.

Ozark states that it is filing to remove from its tariff provisions providing for the imposition of transportation charges for imbalance netting and trading pursuant to the directive of the Commission's order in this proceeding.

Ozark further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may

be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2110(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30342 Filed 11–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–411–000]

Southern California Edison Company; Notice of Filing

November 22, 2000.

Take notice that on November 9, 2000, Southern California Edison Company (SCE), tendered for filing the Agreement for Interconnection Service (Agreement), between SCE and Harbor Cogeneration Company (Harbor).

The Agreement specifies the terms and conditions under which SCE will interconnect Harbor's 80,000 kW generating facility with SCE's Harborgen Substation pursuant to SCE's Transmission Owner Tariff.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or November 30, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30357 Filed 11–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–414–000]

Southern California Edison Company; Notice of Filing

November 22, 2000.

Take notice that on November 13, 2000, Southern California Edison Company (SCE) tendered for filing the Agreement For Interconnection Service (Agreement), between SCE and Harbor Cogeneration Company (Harbor).

The Agreement specifies the terms and conditions under which SCE will interconnect Harbor's 80,000 kW generating facility with SCE's Harborgen Substation pursuant to SCE's Transmission Owner Tariff.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or December 4, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30358 Filed 11–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP96–312–043 and GT01–5–000]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate

November 22, 2000.

Take notice that on November 15, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing Original Sheet No. 30G for inclusion in Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1. The filed tariff sheet reflects negotiated rate agreements between Tennessee and its Eastern Express Project 2000 shippers. Tennessee requests that the Commission approve the filed tariff sheet to be effective December 15, 2000.

Tennessee notes that in its October 29, 1999 ''Order Issuing Certificate'' in Tennessee Docket No. CP99–262–000, the Commission approved the negotiated rates for the Eastern Express Project 2000 shippers. *Tennessee Gas Pipeline Company,* 89 FERC ¶ 61,362 (1999). In accordance with the Commission's October 29, 1999 Order and consistent with the Commission's decisions in *Noram Gas Transmission Company,* FERC ¶ 61,091 (1996) and *Tennessee Gas Pipeline Company* 76 FERC ¶ 61,224 (1996), Tennessee is filing Original Sheet No. 30G.

Tennessee also requests that the Commission make a determination whether the Gas Transportation Agreement between Tennessee and Milford Power Company (''Milford Agreement'') constitutes a non-conforming service agreement. In that regard, the Milford Agreement contains two provisions (Article VII and Section 12.3) on which Tennessee seeks a determination because they vary from the corresponding provisions in Tennessee's *pro forma* FT–A Gas Transportation Agreement. First, Article VII provides that any payments (*i.e.,* refunds) due to Milford Power Company from Tennessee will be paid directly to the lender that is financing the Milford Power Plant. Section 12.3 provides that Tennessee will provide written notice to the lender and Milford Power Company in the event of any default that could lead to termination of the Milford Agreement. In the event the Commission determines that the Milford Agreement ''deviates in any material aspect'' from Tennessee's *pro forma* FT–A Gas Transportation Agreement, Tennessee will, in a compliance filing, revise its FERC Gas Tariff to identify the

Milford Agreement as a non-conforming service agreement.

Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30344 Filed 11–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–035]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

November 22, 2000.

Take notice that on November 17, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing an FT–A Agreement and three letter agreements (Negotiated Rate Arrangement). Tennessee requests that the Commission approve the Negotiated Rate Arrangement effective December 1, 2000.

Tennessee states that the Negotiated Rate Arrangement reflects a negotiated rate transaction between Tennessee and Eastman Chemical Company for transportation under Rate Schedule FT–A.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http//www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30345 Filed 11–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–83–006]

Texas Gas Transmission Corporation; Notice of Filing of Pro Forma Tariff Sheets

November 22, 2000.

Take notice that on November 21, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, the following pro forma tariff sheets to become effective January 14, 2000:

First Revised Sheet No. 79
Original Sheet No. 80
Original Sheet No. 80G
Original Sheet No. 80H

On November 29, 1999, Texas Gas filed proposed tariff sheets to establish a new Summer No-Notice Service (SNS). The Commission Order issued January 12, 2000, suspended the effective date of those tariff sheets until June 14, 2000, subject to refund, the conditions set forth within the Order, and the outcome of a technical conference. The pro forma tariff sheets submitted herein reflect changes to the SNS Rate Schedule, which Texas Gas agreed to as a result of the recent technical conference. Texas Gas also requests withdrawal of the tariff sheets that were filed on March 10, 2000, in Docket No. RP00–83–002 and noticed by the Commission on March 15, 2000. The pro forma tariff sheets will replace and reflect the identical revisions previously filed on March 10, 2000.

Texas Gas states that copies of the revised tariff sheets are being mailed to all parties on the Commission's official service list as well as to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30352 Filed 11–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–288–005]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 22, 2000.

Take notice that on November 16, 2000, Transwestern Pipeline Company (Transwestern) tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, proposed to become effective on November 16, 2000:

First Revised Sheet No. 5B.07

Transwestern states that the above sheet is being filed to implement a

specific negotiated rate transaction in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Transwestern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30349 Filed 11–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–228–004]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 22, 2000.

Take notice that on November 15, 2000, Transwestern Pipeline Company (Transwestern) tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective on November 15, 2000:

Second Revised Sheet No. 5B.05
Original Sheet No. 5B.07

Transwestern states that the above sheets are being filed to implement a specific negotiated rate transaction in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Transwestern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 88 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–30351 Filed 11–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–626–001]

Transwestern Pipeline Company; Notice of Compliance Filing

November 22, 2000.

Take notice that on November 13, 2000, Transwestern Pipeline Company (Transwestern) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following sheets to be effective January 1, 2001:

18 Revised Sheet No. 48
Sixth Revised Sheet No. 70
Original Sheet No. 99
Sheet No. 100

Transwestern states that this filing is made to comply with the Commission's October 27, 2000 order which directed Transwestern to file tariff sheets to implement trading of operator imbalances.

Transwestern states that copies of the filing were served upon all parties listed on the official service list for this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–30353 Filed 11–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–110–000]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

November 22, 2000.

Take notice that on November 20, 2000, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of December 21, 2000:

Fourteenth Revised Sheet No. 187
Sheet No. 187A
Sheet No. 188

Williston Basin states that it is filing the proposed revision to its Tariff to facilitate compliance with Order No. 637 and the revised reporting requirements in Section 161.3(1)(2) of the Commission's Regulations.

Effective September 1, 2000, pipelines were required to identify operating personnel and facilities shared by the pipeline and its marketing affiliates on

its Internet web site and update the information within three business days of any change. Williston Basin presently identifies any shared operating personnel and facilities on its Internet accessible Electronic Bulletin Board (EBB) and also in its Tariff. Williston Basin is proposing in the filing to remove language from Section 7.1 of the General Terms and Conditions of its Tariff relating to operating personnel and facilities Williston Basin shares with its marketing affiliates, as this information is now available on its EBB.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–30348 Filed 11–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–7–000]

Central Hudson Gas & Electric Corporation; Notice of Filing

November 22, 2000.

Take notice that on November 21, 2000, Central Hudson Gas & Electric Corporation (Central Hudson) filed with the Federal Energy Regulatory Commission a letter clarifying the nature of a proposed transaction transferring its Danskammer generating units to Dynegy Danskammer L.L.C., as described in a previous filing in the above referenced proceeding.

Central Hudson states that copies of these materials were sent to all parties appearing on the service list in the above referenced docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 1, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–30408 Filed 11–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–30–000, et al.]

Naniwa Energy LLC, et al.; Electric Rate and Corporate Regulation Filings

November 21, 2000.

Take notice that the following filings have been made with the Commission:

1. Naniwa Energy LLC

[Docket No. EG01–30–000]

Take notice that on November 15, 2000, Naniwa Energy LLC (Applicant), 1585 Broadway, New York, NY 10036–8293, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant, a Delaware limited liability company, intends to own and/or operate an eligible facility in Nevada. These facilities will consist of up to six natural gas-fired Westinghouse and Mitsubishi Model 501AA combustion turbines, each with approximately sixty megawatts capacity, as well as interconnecting transmission facilities necessary to effect sales of electric energy at wholesale.

Comment date: December 12, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Arizona Public Service Company

[Docket No. ER01–463–000]

Take notice that on November 16, 2000, Arizona Public Service Company (APS), tendered for filing a revision to its Open Access Transmission Tariff (OATT) in order to Standardized procedures for requesting interconnection service (Attachment M) and a pro forma Interconnection and Operating Agreement (Attachment N).

APS requests an effective date of November 17, 2000.

A copy of this filing has been served on the Arizona Corporation Commission, Panda Gila River, L.P., Pinnacle West Energy Company, Reliant Energy Desert Basin LLC, and AES. Copies of the filing can be viewed on APS' OASIS website, www.azpsoasis.com.

Comment date: December 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. PJM Interconnection, L.L.C.

[Docket No. ER01–469–000]

Take notice that on November 15, 2000 PJM Interconnection, L.L.C. (PJM) tendered for filing Thirty (30) signatory pages of parties to the Operating Agreement. PJM requests an effective date on the day after this Notice of Filing is received by FERC.

Comment date: December 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. American Transmission Systems, Inc.

[Docket No. ER01–274–001]

Take note that on November 17, 2000, American Transmission Systems, Inc. (ATSI), an Amendment to its October 31, 2000 filing in this case to conform the 1st Revised Service Agreement No. 214 for Network Integration Transmission Service provided by American Transmission Systems, Inc. to American Municipal Power-Ohio, Inc. (AMP-Ohio) on behalf of certain designated municipal electric systems in Ohio and Pennsylvania to the requirements of Order No. 614. The

Amendment does not modify the terms and conditions of the Network Agreements between American Transmission Systems, Inc. and AMP-Ohio.

American Transmission Systems, Inc. renews its request for an effective date of October 1, 2000 for the 1st Revised Service Agreement No. 214.

Copies of this filing have been served on the utility commissions in Ohio and Pennsylvania.

Comment date: December 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Miami Valley Lighting, Inc.

[Docket No. ER01–95–001]

Take notice that on November 16, 2000, Miami Valley Lighting, Inc., (MVLT), a wholly owned subsidiary of DPL Inc., tendered for filing a rate schedule to engage in sales at market-based rates. MVLT included in its filing a proposed code of conduct.

Comment date: December 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Pool

[Docket No. ER01–459–000]

Take notice that on November 15, 2000, the New England Power Pool (NEPOOL) tendered for filing (1) the Sixty-Seventh Agreement Amending New England Power Pool Agreement, which changes the amortization and repayment methodology for certain expenses related to the restructuring of NEPOOL (the Restructuring Expense) incurred before May 1, 1999, and (2) the Sixty-Eighth Agreement Amending New England Power Pool Agreement, which changes the collection, amortization and repayment methodology for the Restructuring Expense incurred on and after January 1, 2000 and makes revisions related to alternative funding arrangements for certain portions of the Restructuring Expense.

A January 1, 2001 effective date is requested for these Agreements.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment date: December 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER01–456–000]

Take notice that on November 15, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing a Notice of Cancellation for Service Agreements with FPL Energy Services, Inc., (Customer) a customer under Allegheny Power's Open Access Transmission Service Tariff and Market Rate Tariff.

Allegheny Power has requested that the cancellations be effective as of November 14, 2000.

Copies of the filing have been provided to the Customer, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: December 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Naniwa Energy LLC

[Docket No. ER01–457–000]

Take notice that on November 15, 2000, Naniwa Energy LLC petitioned the Commission for acceptance of its Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and the waiver of certain of the Commission's Regulations.

Comment date: December 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. PECO Energy Company

[Docket No. ER01–455–000]

Take notice that on November 8, 2000, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.,* an Agreement dated November 1, 2000 with Split Rock Energy LLC (SRE) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of November 1, 2000 for the Agreement.

PECO states that copies of this filing have been supplied to Split Rock Energy LLC and to the Pennsylvania Public Utility Commission.

Comment date: December 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. American Electric Power Service Corporation

[Docket No. ER01–454–000]

Take notice that on November 15, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing executed Interconnection and Operation Agreement between Ohio Power Company and PSEG Waterford Energy, LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEP requests an effective date of November 20, 2000.

A copy of the filing was served upon the Public Utilities Commission of Ohio.

Comment date: December 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. UtiliCorp United Inc.

[Docket No. ER01–452–000]

Take notice that on November 15, 2000, UtiliCorp United Inc. (UtiliCorp), tendered for filing on behalf of its WestPlains Energy-Colorado operating division, a service agreement for sales of energy and capacity to UtiliCorp from The Pueblo Chieftain.

Comment date: December 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER00–139–001]

Take notice that on November 15, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing (1) a Notice of Letter of Acquisition of Merger of Citizens Power LLC into Edison Mission Marketing & Trading (2) a Notice of Name Changes from Amoco Energy Trading Corporation to BP Energy Company; (3) a Notice of Name Change from Williams Energy Services Company to Williams Energy Marketing & Trading Company; and (4) a Notice of Name Change from Engage Energy US, L.P. to Coastal Merchant Energy, L.P.

Cinergy respectfully requests waiver of any applicable regulation to the extent necessary to make the tariff changes effective as of the date of each of the listed name changes.

A copy of the filing was served upon the affected parties.

Comment date: December 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. SOWEGA Power LLC

[Docket No. ER00–3775–001]

Take notice that on November 15, 2000, SOWEGA Power LLC made a compliance filing consisting of amended and restated long-term service agreements with Grady Electric Membership Corporation and Three Notch Electric Membership Corporation pursuant to SOWEGA Power LLC's market-based tariff, FERC Electric Tariff, Original Vol. No. 1. These amended and

restated long-term service agreements are designated as SOWEGA Power's First Revised Rate Schedule FERC No. 1 and First Revised Rate Schedule FERC No. 2, respectively, and were approved by the Commission effective November 2, 2000 conditioned on this compliance filing designating such agreements under Order No. 614.

Comment date: December 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Pacific Gas and Electric Company

[Docket No. ER01–460–000]

Take notice that on November 15, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing revised Must-Run Service Agreements (RMR Agreements) between it and the California Independent System Operator Corporation (ISO). Under these agreements PG&E dispatches certain power plants designated as Reliability Must-Run by the ISO. Because the ISO has renewed these contracts for 2001, PG&E's filing proposes updates in accordance with contract terms to contract service limits, Target Available Hours, Availability rates and Pre-paid Start-up Charges. This filing also revises PG&E's RMR Agreements to conform with several changes to terms and conditions, in compliance with the Commission's approval of the August 14, 2000, settlement among the ISO, PG&E and various parties. In addition, this filing conforms PG&E's RMR Agreements to the requirements of Order No. 614.

Copies of this filing have been served upon the ISO, the California Electricity Oversight Board, and the California Public Utilities Commission.

Comment date: December 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Idaho Power Company

[Docket No. ER01–458–000]

Take notice that on November 15, 2000, Idaho Power Company (IPC) tendered for filing with the Federal Energy Regulatory Commission a Service Agreement for Firm Point-to-Point Transmission Service between Idaho Power Company and Morgan Stanley Capital Group Inc.

Comment date: December 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Southern California Edison Company

[Docket No. ER01–414–000]

Take notice that the Notice of Filing issued on November 17, 2000, in Docket No. ER01–414–000, should be rescinded.

17. Consumers Energy Company; Michigan Electric Transmission Company

[Docket No. ER01–410–000]

Take notice that the Notice of Filing issued on November 17, 2000, in Docket No. ER01–410–000, should be rescinded.

18. Southern California Edison Company

Docket No. ER01–411–000

Take notice that the Notice of Filing issued on November 17, 2000, in Docket No. ER01–411–000, should be rescinded.

19. New York State Electric & Gas Corporation

[Docket No. ER01–451–000]

Take notice that on November 15, 2000, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, an amendment to Rate Schedule 200 filed with FERC corresponding to an Agreement with the New York Power Authority (NYPA). The proposed amendment would initiate revenues of $117,881 for new facilities for the period from September 25, 2000 through August 31, 2001.

This rate filing is made pursuant to Paragraph 5.1 of the October 19, 1999 Facilities Agreement between NYSEG and NYPA, filed with FERC. The annual charges for routine operation and maintenance and general expenses, as well as property taxes, are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve month ended December 31, 1999. The revised facilities charge is levied on the cost of the 135 MVAR capacitor and associated equipment interconnected with NYSEG's Oakdale Substation, constructed by NYSEG for the sole use of NYPA.

NYSEG requests an effective date of September 1, 2000.

Copies of the filing were served upon the New York Power Authority and the Public Service Commission of the State of New York.

Comment date: December 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–30340 Filed 11–28–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Settlement Agreement, Amendment of License, and Soliciting Comments, Motions to Intervene, and Protests

November 22, 2000.

Take notice that the following Settlement Agreement and Amendment of License has been filed with the Commission and is available for public inspection:

a. *Application Type:* Settlement Agreement and Amendment of License.

b. *Project No.:* 2114–003.

c. *Date Filed:* September 13, 2000.

d. *Applicant::* Public Utility District No. 2 of Grant County, WA.

e. *Name of Project:* Priest Rapids Hydroelectric Project.

f. *Location:* On the Columbia River, in Grant, Yakima, Kittitas, Douglas, Benton, and Chelan counties, Washington. The project occupies federal lands managed by the U.S. Bureau of Land Management, U.S. Bureau of Reclamation, U.S. Department of Energy, U.S. Department of the Army, and U.S. Fish and Wildlife Service.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602 (2000) and the Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Don Godard, Public Utility District No. 2 of Grant County, WA, P.O. Box 878, Ephrata, WA, 98823; (509) 754–3541.

i. *FERC Contact:* Bob Eaton (202) 219–2782, Email: robert.easton@ferc.fed.us

j. *Deadline Dates:* Comments are due December 29, 2000; reply comments are due January 16, 2001.

k. *All documents (original and eight copies) should be filed with:* David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Filing:* Public Utility District No. 2 of Grant County, WA, filed a Settlement Agreement on behalf of itself and the National Marine Fisheries Service, Colville Confederated Indian Tribe, Columbia River Inter-Tribal Fish Commission, Confederated Tribes and Bands of the Yakima Nation, Confederated Tribes of the Umatilla Indian Reservation, U.S. Fish and Wildlife Service, Washington Department of Fish and Wildlife, and American Rivers. The purpose of the Settlement Agreement is to resolve among the signatories issues related to operation of the project in regard to spill flows and their effect on downstream fish passage. Approval of the Settlement Agreement by the Commission would require amendment of the license; therefore, the applicant's submission also serves as a request for license amendment. Comments and reply comments on the Settlement Agreement and Amendment of License are due on the dates listed in item j above.

m. Copies of the Settlement Agreement and amendment application are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance) or at the address listed in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests, or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–30347 Filed 11–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–327–000 and RP00–326–000]

Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company; Notice of Technical Conferences

November 22, 2000.

On June 15, 2000, Columbia Gas Transmission Corporation (Columbia Gas) and Columbia Gulf Transmission Company (Columbia Gulf) submitted filings to comply with Order No. 637. Several parties have protested various aspects of Columbia Gas' filing and Columbia Gulf's filing.

Take notice that a technical conference to discuss the various issues raised by Columbia Gulf's filing will commence on Wednesday, December 13, 2000, at 10:00 am.

Also take notice that a technical conference to discuss the various issues raised by Columbia Gas's filing will commence on Thursday, December 14, 2000, at 9:00 am.

The technical conferences will be held in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Parties protesting aspects of Columbia Gas' filing and Columbia Gulf's filing should be prepared to discuss alternatives.

All interested persons and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 00–30354 Filed 11–28–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6909–5]

Proposed Administrative Cost Recovery Agreements under CERCLA Section 122(h) for Recovery of Past Costs at the Barceloneta Landfill Superfund Site, Barceloneta, Puerto Rico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of two (2) proposed administrative settlements, entered into pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of past response costs concerning the Barceloneta Landfill Superfund Site (''Site'') located in Barceloneta, Puerto Rico. These settlements with the U.S. Environmental Protection Agency (''EPA'' or the ''Agency'') are each entered into with one party, one with Bristol-Myers Barceloneta, Inc. (''BMS''), and the second with Nycomed Puerto Rico, Inc. (''NYCOMED''). The settlements require BMS and NYCOMED to pay $225,000.00 and $125,000.00, respectively, to EPA, in reimbursement of past response costs incurred with respect to the Site. The settlements include a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), for all costs that EPA or the U.S. Department of Justice, on behalf of EPA, paid at or in connection with the Site through the date of execution of the

proposed settlements by EPA, including interest on that amount. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlements. The Agency will consider all comments received and may modify or withdraw its consent to the settlements if comments received disclose facts or considerations that indicate that the proposed settlements are inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA, Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before December 29, 2000.

ADDRESSES: The proposed settlements are available for public inspection at the United States Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866. A copy of either of the proposed settlements may be obtained from James F. Doyle, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, 17th Floor, 290 Broadway, New York, New York 10007–1866. Comments should reference the Barceloneta Landfill Superfund Site located in Barceloneta, Puerto Rico. Requests for a copy of the BMS agreement should reference Docket No. CERCLA–02–2000–2012, and requests for a copy of the NYCOMED agreement should reference Docket No. CERCLA–02–2000–2011. Any comments or requests should be addressed to James F. Doyle, Assistant Regional Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th floor, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: James F. Doyle, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3165.

Dated: November 15, 2000.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 00–30424 Filed 11–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6909–6]

Public Water System Supervision Program Revision for the State of Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Georgia is revising its approved Public Water System Supervision Program. Georgia has adopted drinking water regulations requiring consumer confidence reports from all community water systems, defining analytical methods for radionuclides, removing prohibition of the use of point of use devices, requiring special monitoring for inorganic and organic contaminants and revising definitions for administrative penalty authority, public water system, and existing variance and exemption regulations. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends on approving this State program revision.

All interested parties may request a public hearing. A request for a public hearing must be submitted by December 30, 2000 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by December 30, 2000, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on December 30, 2000. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual organization, or other entity requesting a hearing; A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Department of Natural Resources, Environmental Protection Division, Water Resources Branch, 205 Bulter Street, S.E., Atlanta, GA 30334 or at the Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street Southwest, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Lori Brown, EPA Region 4, Drinking Water Section at the Atlanta address given above or at telephone (404)562–9482.

Authority: (Section 1420 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations)

Dated: November 16, 2000.

Michael V. Peyton,

Acting Regional Administrator, Region 4.

[FR Doc. 00–30422 Filed 11–28–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6909–7]

Public Water Supervision Program Revision for the State of Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Tennessee is revising its approved Public Water System Supervision Program. Tennessee has adopted drinking water regulations establishing administrative penalty authority, and which revise the definition of a Public Water System. EPA has determined that the administrative penalty authority revisions meet all minimum federal requirements, and that the Public Water System definition revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted by December 29, 2000 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by December 29, 2000, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on December 29, 2000. Any request for a public hearing shall

include the following information: The name, address, and telephone number of the individual organization, or other entity requesting a hearing; A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on the behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Tennessee Department of Environment and Conservation, Division of Water Supply, 401 Church Street, L&C Tower, Sixth Floor, Nashville, Tennessee, 37219–5404, or at the Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street Southwest, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Fred Hunter, EPA Region 4, Drinking Water Section at the Atlanta address given above, or by telephone at (404) 562–9477.

Authority: Actions 1401 and 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR parts 141 and 142.

Dated: November 16, 2000.

Michael V. Peyton,

Acting Regional Administrator, Region 4.

[FR Doc. 00–30423 Filed 11–28–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1347–DR]

Arizona; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arizona FEMA–1347–DR, dated November 8, 2000, and related determinations.

EFFECTIVE DATE: November 8, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective November 8, 2000.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–30451 Filed 11–28–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Fee for Services to Support FEMA's Offsite Radiological Emergency Preparedness (REP) Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: In accordance with FEMA Interim Rule, CFR Part 354, published in the **Federal Register** on December 10, 1998, 60 FR 15628, FEMA has established a fiscal year (FY) 2001 hourly rate of $35.75 for assessing and collecting fees from Nuclear Regulatory Commission (NRC) licensees for services provided by FEMA personnel for FEMA's REP Program.

DATES: This user fee hourly rate is effective for FY 2001 (October 1, 2000, to September 30, 2001).

FOR FURTHER INFORMATION CONTACT: Mr. Russell Salter, Division Director, Chemical and Radiological Preparedness Division, Preparedness, Training and Exercises Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3030 (phone), or (email) russ.salter@fema.gov.

SUPPLEMENTARY INFORMATION: As authorized by Public Law 105–276, 112 Stat. 2461, we will charge an hourly user fee rate of $35.75 to NRC licensees of commercial nuclear power plants for all site-specific biennial exercise related services provided by FEMA personnel for FEMA's REP Program under 44 CFR Part 354. We will deposit funds that we collect under this rule in the REP Program Fund to offset the actual costs by FEMA for its REP Program.

We established the hourly rate on the basis of the methodology set forth in 44 CFR 354.4(b), ''Determination of site-specific biennial exercise related component for FEMA personnel,'' and will use the rate to assess and collect fees for site-specific biennial exercise related services rendered by FEMA personnel. This hourly rate only addresses charges to NRC licensees for services that FEMA personnel provide under the site-specific component, not charges for services FEMA personnel provide under the flat fee component referenced at 44 CFR 354.4(d), nor for services that FEMA contractors provide. We will charge for FEMA contractors' services in accordance with 44 CFR 354.4 (c) and (d) for the recovery of appropriated funds obligated for the Emergency Management Planning and Assistance (EMPA) portion of FEMA's REP Program budget.

Dated: November 13, 2000.

Kay C. Goss,

Associate Director for Preparedness, Training, and Exercises.

[FR Doc. 00–30450 Filed 11–28–00; 8:45 am]

BILLING CODE 6718–06–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Privacy Act of 1974; Notice of the Addition of a New System of Records

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice of existence and character of a new system of records.

SUMMARY: The Federal Mediation and Conciliation Service (''FMCS''), under the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4), is hereby publishing a notice of a new system to be added to the FMCS systems of records. Title 5 U.S.C. 552a(e)(4) and (11) provides that the public be given 30 days to comment on the amended system of records. The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires 40 days to conclude its review of the amended system of records.

EFFECTIVE DATES: The proposed changes to FMCS' systems of records becomes effective January 8, 2001.

ADDRESSES: Comments should be addressed to Karen D. Kline, Deputy General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, N.W., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Karen D. Kline, (202) 606–5488.

SUPPLEMENTARY INFORMATION: FMCS has adopted a new system of records, FMCS/VI Roster of Data File, under the

Privacy Act of 1974. This system does not duplicate any existing agency system. This notice includes the name; location; categories of individuals on whom the records are maintained; categories of records in the system; authority for maintenance of the system; each routine use; the policies and practices governing storage, retrievability, access controls, retention and disposal; the title and business address of the agency official responsible for the system of records; procedures for notification, access and contesting the records of each system; and the sources for the records in each system. 5 U.S.C. 552(a)(4).

Dated: November 21, 2000.

Jane Lorber,

General Counsel.

FMCS/VI

SYSTEM NAME:

Roster of Neutrals Data File.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Mediation and Conciliation Service, Washington, DC 20427.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for the roster of neutrals and neutrals who are on the roster.

CATEGORIES OF RECORDS IN THE SYSTEM:

The first category of records consists of applicant records, those not accepted, to the roster of neutrals. These records contain personal resumes, the personal data questionnaire listing education, professional background and experience, confidential and other recommendations as to acceptability, and correspondence pertaining to rejection from placement on the roster. The second category of records consists of the files of current neutrals (those currently on the roster) and contains the same information as in the applicant files. In addition, such files include: (1) Evaluation and rating of a neutral's experience; (2) competency for certain types of cases; (3) correspondence with a neutral concerning standard fees, interest in only certain cases, complaints, and other correspondence related to case handling procedures; and, (4) biographical sketches summarizing information contained in the personal data questionnaire.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title II Labor Management Relations Act, 1947, as amended.

PURPOSE(S):

To maintain applications containing personal resumes and other background information provided by neutrals for evaluation, credentialing and assignment to perform non-labor relations alternative dispute resolution work which FMCS may obtain.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Biographical sketches are furnished to the parties requesting non-labor relations alternative dispute resolution from FMCS. Data furnished by the applicant or neutral and other sources listed above is routinely disclosed to appropriate persons or organizations outside the agency in the course of verification or evaluation for the purpose of admittance to or retention on the roster. Data furnished by any source in the nature of a complaint or inquiry about the neutral's performance or qualifications are routinely referred to the appropriate person inside the agency in the course of investigating a neutral's eligibility for retention on the roster.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in original/duplicate document form, electronic form and computer tape.

RETRIEVABILITY:

These records are retrieved by an individual name or identification number.

SAFEGUARDS:

Presently, the files are stored in the FMCS Institute. Access is restricted to FMCS Institute personnel and Management Systems personnel on a limited basis only. These files are used for purposes of evaluating and rating the experience of the neutrals applying to be included on the roster of neutrals and for making appropriate referrals for non-labor management alternative dispute resolution.

RETENTION AND DISPOSAL:

Files on neutrals who are included on the roster are maintained as long as the individual is utilized for referral of alternative dispute resolution cases. The files of applicants to the roster are maintained for 2 years. After the two-year retention period, a separate listing of rejected neutral applicants is prepared and the file is destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, FMCS Institute, Federal Mediation and Conciliation Service, 2100 K Street, NW, Washington, DC 20427.

NOTIFICATION PROCEDURE:

Individuals seeking knowledge of whether the system contains information about them should direct their inquiries in writing to the Director of Administration or Director of the FMCS Institute at the aforementioned address. All such inquiries should indicate name and any other information that may be helpful in locating the file.

RECORD ACCESS PROCEDURES:

Same as notification procedure above.

CONTESTING RECORD PROCEDURES:

Same as notification procedure above.

RECORD SOURCE CATEGORIES:

The records contain information directly from the individual, information obtained by FMCS, or information prepared by FMCS.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–30308 Filed 11–28–00; 8:45 am]

BILLING CODE 6372–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 12, 2000.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervision), 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Dwight Hubert Marriott and Inez Bernadine Marriott, Higginsport, Ohio; to retain voting shares of CB Bancshares,

Inc., Higginsport, Ohio, and thereby retain voting shares of The Citizens Bank, Higginsport, Ohio.

Board of Governors of the Federal Reserve System, November 22, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–30337 Filed 11–28–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 22, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Holland Bancorp, Inc., Holland, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Holland, Holland, New York.

2. Lakeland Bancorp, Inc., Oak Ridge, New Jersey; to acquire 9.9 percent of the voting shares of Sussex Bancorp, Franklin, New Jersey, and thereby indirectly acquire Sussex County State Bank, Franklin, New Jersey.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *MSB Bankshares, Inc.*, Iron River, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of The Miners' State Bank of Iron River, Iron River, Michigan.

Board of Governors of the Federal Reserve System, November 22, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–30338 Filed 11–28–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225), to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 22, 2000.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *PSB Bancorp, Inc.*, Philadelphia, Pennsylvania; to acquire 13 percent of the voting shares of Jade Financial Corp., Feasterville, Pennsylvania, and thereby indirectly acquire voting shares of IGA Federal Savings Bank, Feasterville, Pennsylvania, and thereby engage in owning, controlling, or operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. *Union Planters Corporation,* Memphis, Tennessee; to acquire Jefferson Savings Bancorp, Inc., Ballwin, Missouri, and thereby indirectly acquire Jefferson Heritage Bank, Ballwin, Missouri, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y; Jefferson Heritage Mortgage Company, Ballwin, Missouri, and thereby engage in extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; Jefferson Financial, Inc., Ballwin, Missouri, and thereby engage in performing trust company functions, pursuant to § 225.28(b)(5) of Regulation Y, and in securities brokerage activities, pursuant to § 225.28(b)(7) of Regulation Y; and Jefferson Financial Corporation, Ballwin, Missouri, and thereby engage in extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, November 22, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–30339 Filed 11–28–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, November 29, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Discussion Agenda

1. Publication for comment of proposed amendments to Regulation C

(Home Mortgage Disclosure) based on a comprehensive review of the regulation (Advance Notice of Proposed Rulemaking published earlier for public comment; Docket No. R–1001).

2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: November 22, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–30389 Filed 11–27–00; 9:47 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 11:30 a.m., Wednesday, November 29, 2000, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 22, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–30390 Filed 11–27–00; 9:47 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Amendment to Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. This notice, which was published on November 27, 2000, appeared late because publication deadlines, outside of the control of the Commission, interfered with timely notice. The Commission will discuss its ongoing projects: (a) Draft report on ethical issues in international research and (b) ethical and policy issues in the oversight of human subjects research in the United States. Some Commission members may participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on December 7 from 1:00–1:30 pm.

Dates/times	Location
December 7, 2000, 8:30 am–5:00 pm.	The Embassy Row Hilton, 2015 Massachusetts Avenue, NW, Washington, DC 20036.
December 8, 2000, 8:00 am–12:00 pm.	Same location as above.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1999 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Jody Crank by telephone, fax machine, or mail as shown below as soon as possible, at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Crank, National Bioethics Advisory Commission, 6705 Rockledge Drive, Suite 700, Bethesda, Maryland 20892–7979, telephone (301) 402–4242, fax number (301) 480–6900.

Dated: November 24, 2000.

Eric M. Meslin,

Executive Director, National Bioethics Advisory Commission.

[FR Doc. 00–30429 Filed 11-27-00; 11:42 am]

BILLING CODE 4167–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Health Education Assistance Loan (HEAL) Program: Physician's Certification of Borrower's Total and Permanent Disability Form (OMB No. 0915–0204)—Revision

The Health Education Assistance Loan (HEAL) program provided federally-insured loans to students in schools of allopathic medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, allied health, or chiropractic, and graduate students in health administration or clinical psychology through September 30, 1998. Eligible lenders, such as banks, savings and loan associations, credit unions, pension funds, State agencies, HEAL schools, and insurance companies make new refinanced HEAL loans which are insured by the Federal Government against loss due to borrower's death, disability, bankruptcy, and default. The basic purpose of the program was to assure the availability of funds for loans to eligible students who needed to borrow money to pay for their educational loans. Currently, the program refinances previous HEAL loans, monitors the federal liability, and assists in default prevention activities. The HEAL borrower, the borrower's physician, and the holder of the loan completes the Physician's Certification form to certify that the HEAL borrower meets the total and permanent disability provisions.

The Department uses this form to obtain detailed information about disability claims which includes the following: (1) The borrower's consent to release medical records to the Department of Health and Human Services and to the holder of the borrower's HEAL loans, (2) pertinent information supplied by the certifying physician, (3) the physician's certification that the borrower is unable to engage in any substantial gainful activity because of a medically determinable impairment that is expected to continue for a long and indefinite period of time or to result in death, and (4) information from the lender on the unpaid balance. Failure to submit the required documentation will result in disapproval of a disability claim.

The estimate of burden for the Physician's Certification form is as follows:

Type of respondent	Number of respondents	Responses per respondent	Total responses	Minutes per response (min)	Total burden hours
Borrower*	117	1	117	5	10
Physician	117	1	117	30	59
Loan Holder	20	5.85	117	10	20
Total	254	351		89	

*Includes 2 categories of borrowers requesting disability waivers: (1) whose loans have previously defaulted and (2) whose loans have not defaulted.

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received before December 29, 2000.

Dated: November 22, 2000.

James J. Corrigan,

Associate Administrator for Management and Program Support.

[FR Doc. 00–30454 Filed 11–28–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456–N–13]

Privacy Act of 1974; Notice of Matching Program: Matching Tenant Data in Assisted Housing Programs

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of a computer matching program between the Department of Housing and Urban Development (HUD) and the Social Security Administration (SSA) and the Internal Revenue Service (IRS).

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, and the Office of Management and Budget's (OMB) Guidance on the statute, HUD is updating its notice of a matching program involving comparisons between income data provided by applicants or participants in HUD's assisted housing programs and independent sources of income information. The matching program will be carried out to detect inappropriate (excessive or insufficient) housing assistance under the National Housing Act, the United States Housing Act of 1937, section 101 of the Housing and Community Development Act of 1965, the Native American Housing Assistance and Self-Determination Act of 1996, and the Quality Housing and Work Responsibility Act of 1998. The program provides for the verification of the matching results and the initiation of appropriate administrative or legal actions, primarily through public housing agencies (HAs) and owners and agents (all collectively referred to as POAs). Indian tribes and tribally designated housing entities (TDHEs) are not a mandatory component of the computer matching program. Participation by Indian tribes and TDHEs is discretionary; however, they may receive and use social security and supplemental security income matching information provided by HUD. During 1999 the responsibilities for the computer matching program were transferred from the Office of Public and Indian Housing (PIH) to the Real Estate Assessment Center (REAC).

This notice provides an overview of computer matching for HUD's assisted housing programs. Specifically, the notice describes HUD's program for computer matching of its tenant data to: (a) The Social Security Administration's (SSA) earned income and the Internal Revenue Service's (IRS) unearned income data, (b) SSA's wage, social security, supplemental security income and special veterans benefits data, (c) State Wage Information Collection Agencies' (SWICAs') wage and unemployment benefit claim

information, and (d) the Office of Personnel Management's (OPM) personnel data.

DATES: Computer matching is expected to begin 30 days after publication of this notice unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

Comments due by: December 29, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: *For Privacy Act:* Jeanette Smith, Departmental Privacy Act Officer, Room 4178, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–2374. A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

For further information from recipient agency: Project Manager, Tenant Assessment Sub-System, Real Estate Assessment Center, Department of Housing and Urban Development, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024–2635, telephone number (202) 708–4932, extension 3214; William N. Siska, Director, Chicago Technical Assistance Center, Department of Housing and Urban Development, 77 West Jackson Boulevard, Room 2205, Chicago, Illinois 60604, telephone number (312) 353–6236, extension 2084; and Gordon L. Brandhagen, Director, Seattle Technical Assistance Center, Department of Housing and Urban Development, 909 First Avenue, Suite 190, Seattle, Washington 98104, telephone number (206) 220–5312. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: This notice supersedes a similar notice published in the **Federal Register** on December 9, 1998 (63 FR 68130). Since that time, the matching program has been implemented on a large scale. In previous years, the computer matching was carried out for random samples of households receiving rental assistance or for selected POAs. During calendar year 1999, HUD used the matching program for a large-scale computer matching project involving over 2 million households. HUD announced plans for the large-scale implementation of the program in 64 FR 49817, (September 14, 1999). In addition, HUD established Technical Assistance Centers in Chicago and Seattle in calendar year 2000 to support the activities of the computer matching program. Technical Assistance Center employees at the two locations respond to telephone calls from tenants and POA staff regarding the income matching program.

The Computer Matching and Privacy Protection Act of 1988, as amended (5 U.S.C. 552a) (the CMPP Act), the Office of Management and Budget's guidance on this statute entitled ''Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988'' (OMB Guidance), and OMB Circular No. A–130 requires publication of notices of computer matching programs. Appendix I to OMB's Revision of Circular No. A–130, ''Transmittal 2, Management of Federal Information Resources,'' prescribes Federal agency responsibilities for maintaining records about individuals. In accordance with the CMPP Act and Appendix I to OMB Circular No. A–130, copies of this notice are being provided to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and OMB's Office of Information and Regulatory Affairs.

I. Authority

This matching program is being conducted pursuant to sections 3003 and 13403 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, approved August 10, 1993); section 542(b) of the 1998 Appropriations Act (Public Law 105–65); section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C.3544); section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543); the National Housing Act (12 U.S.C. 1701–1750g); the United States Housing Act of 1937 (42 U.S.C. 1437–1437o); section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*); and the Quality Housing and Work Responsibility Act of 1998.

The Omnibus Budget Reconciliation Act of 1993 (Budget Reconciliation Act) authorizes HUD to request from the SSA and the IRS Federal tax information as prescribed in section 6103(l)(7) of title 26 of the United States Code (Internal Revenue Code). Section 542(b) of HUD's 1998 Appropriation Act (Public Law 105–65; October 27, 1997) eliminated a September 30, 1998, sunset provision to 26 U.S.C. 6103(l)(7)(D)(ix) of the Internal Revenue Code effectively making permanent the authority for SSA and IRS disclosures of Federal tax information to HUD.

The Federal tax information that HUD receives includes income data that individuals receive from employers and financial institutions (*e.g.,* income data that would be shown on IRS Form W–2 and Form 1099) for use in preparing tax returns. The Budget Reconciliation Act prohibits HUD redisclosure of tax data to POAs. However, it allows HUD to disclose the fact that discrepancies exist between income information provided by tenants and Federal tax information, and to request that POAs reverify tenant incomes when income comparisons indicate uncertain eligibility benefits or an inappropriate level of benefits.

Section 3003 of the Budget Reconciliation Act requires that applicants and participants in assisted housing programs sign a consent form authorizing the Secretary of HUD to request that the Commissioner of Social Security and the Secretary of the Treasury release the Federal tax information. The final rule regarding participants' consent to the release of information was published by HUD in the **Federal Register** on March 20, 1995 (61 FR 11112).

The Stewart B. McKinney Homeless Assistance Amendments Act of 1988 authorizes HUD and HAs (but not private owners/management agents for subsidized multifamily projects) to request wage and claim information from State Wage Information Collection Agencies (SWICAs) responsible for administering State unemployment laws in order to undertake computer matching. This Act authorizes HUD to require applicants and participants to sign a consent form authorizing HUD or the HA to request wage and claim information from the SWICAs.

The Housing and Community Development Act of 1987 authorizes HUD to require applicants and participants (as well as members of their households six years of age and older) in HUD-administered programs involving rental assistance to disclose to HUD their social security numbers (SSNs) as a condition of initial or continuing eligibility for participation in the programs.

The Quality Housing and Work Responsibility Act of 1998 (QHWRA), Section 508(d), 42 U.S.C. 1437a (1998) authorizes the Secretary of HUD to require disclosure by the tenant to the public housing agency of income information received by the tenant from HUD as part of income verification procedures of HUD. The QHWRA was amended by Public Law 106–74 which extended the disclosure requirements to participants in section 8, section 202, and section 811 assistance programs. The participants are required to disclose the HUD-provided income information to owners responsible for determining the participants' eligibility or level of benefits.

II. Objectives To Be Met by the Matching Program

HUD's primary objective in implementing the computer matching program is to increase the availability of rental assistance to individuals who meet the requirements of the rental assistance programs. Other objectives include determining the appropriate level of rental assistance, and deterring and correcting abuses in assisted housing programs. In meeting these objectives HUD also is carrying out a responsibility under 42 U.S.C. 1437f(K) to ensure that income data provided to POAs by household members is complete and accurate. Using Federal tax information, HUD conducts a computer matching and income verification program annually for a random sample of households that received rental assistance. Based on the computer matching and subsequent HUD analysis of tenant-provided information, HUD develops nationwide estimates of the extent of excess rental assistance, and uses the estimates for financial statement reporting purposes. HUD implemented a large-scale computer matching project in Fiscal Year 2000 that used 1998 information from other Federal agencies. HUD sends letters to tenants and notices to POAs so that these parties may resolve the income discrepancies.

HUD's various assisted housing programs, available through POAs, require that applicants meet certain income and other criteria to be eligible for rental assistance. In addition, tenants generally are required to report the amounts and sources of their income at least annually. However, under the Quality Housing and Work Responsibility Act of 1998, public housing agencies may now offer tenants the option to pay a flat rent, or an income-based rent. Those tenants who select a flat rent will be required to recertify income at least every three years. In addition, the Changes to the Admissions and Occupancy Final Rule (65 FR 16692; March 29, 2000) specified that household composition must be recertified annually for tenants who select a flat rent or and income-based rentfy.

The matching program identifies tenants receiving inappropriate (excessive or insufficient) rental assistance resulting from under or over-reported household income. When excessive rental assistance amounts are identified, some tenants move out of assisted housing units; other tenants agree to repay excessive rental assistance. These actions may increase rental assistance or number of units available to serve other beneficiaries of HUD programs. When tenants continue to be eligible for rental assistance, but at a reduced level, the tenants will be required to increase their contributions toward rent.

Tribes and TDHEs set admission and eligibility requirements pursuant to the requirements contained in the native American housing Assistance and Self-Determination Act of 1996. They are not required to provide tenant data to the Department. Therefore, their participation is discretionary.

III. Program Description

In this computer matching program, tenant-provided information included in HUD's automated files will be compared to data from the SSA and the IRS. HUD will normally request that the SSA conduct matching of earned income information, and that the IRS conduct matching of unearned income information, at least annually. The Federal tax information matching normally occurs in the first quarter of the Federal Fiscal Year which begins in October, and uses Federal tax information for the prior tax year.

HUD will also request SSA matching of social security, supplemental security income, and special veterans benefits information monthly for residents due to be recertified in four months, and daily (on the receipt of new certifications) for residents. The daily process is currently used only for HUD's Office of Housing's Rental Assistance Programs and may be expanded to the Office of Public and Indian Housing's rental assistance programs. Indian Tribes and Tribally Designated Housing Entities may receive and use social security and supplemental security income matching information provided by HUD.

HUD may also request SWICA matching to supplement SSA and IRS matching and income verification. Public housing agencies, but not owners and management agents, may also request SWICA matching.

HUD will disclose to the SSA, IRS, and SWICAs only tenant personal identifiers, *i.e.,* SSNs, surnames, and dates of birth. The SSA, IRS, and SWICAs will conduct the matching of the HUD-provided personal identifiers to personal identifiers included in their automated files. Those agencies will provide income data to HUD only for individuals with matching personal identifiers. The process of income matching between HUD and the OPM varies from the above. The OPM will disclose its data to HUD, and HUD will conduct the computer matching to OPM data.

HUD will then compare income data obtained from the sources cited above to tenant-reported income data included in HUD's system of records known as the Tenant Eligibility Verification Files (HUD/REAC–1) published at 65 FR 52777; August 30, 2000. HUD/REAC–1 receives tenant data from the Tenant Housing Assistance and Contract Verification Data (HUD/H–11), published at 62 FR 11909, March 13, 1997. The tenant income comparisons identify, based on criteria established by HUD, tenants whose incomes require further verification to determine if the tenants received appropriate levels of rental assistance.

A. Income Verification

HUD will normally request that POAs verify matching results as described below. However, under certain limited circumstances, HUD may verify tenant incomes with independent income sources. For example, such circumstances may include: (a) When HUD declares a public housing agency in breach of an annual contributions contract; or (b) when tenants fail to disclose SSA and IRS data, or the tenants commit other serious violations, and HUD's analysis of the data could support legal actions. HUD may send letters to employers to request income data, but HUD will not disclose tax data to POAs.

(1) Verification of SSA and IRS Data Referenced in Section 6103(l)(7) of the Internal Revenue Code

Since HUD cannot redisclose tax data directly to POAs, HUD will notify tenants of discrepancies between the tenant-reported income and the SSA and IRS data. HUD will supply the tenants with their income information taken directly from SSA and IRS data and request that the tenants provide this information to the POA. Concurrently, HUD will notify the POA that a discrepancy exists between information

provided by the tenants and other sources and will request reverification of the tenants' incomes. The notifications to the POAs will not include any tax information.

Income information that tenants disclose to the POAs will be verified directly with the income source or with the tenant. HUD has determined that POAs may consider the Federal tax information that tenants disclose to the POAs as verified if the tenant does not contest the accuracy of this information when offered an opportunity to do so. If the tenant contests the Federal tax information, the POA must verify it with the entities that provided the information to the SSA or the IRS. An Income Discrepancy Resolution Guide (see Section III.B. of this Notice of Matching Program) issued by HUD describes in greater detail actions that POAs take in resolving income differences identified by the computer matching, and in reporting to HUD on actions taken.

The SSA and the IRS have advised HUD that the process described in the preceding paragraph is consistent with the intent of section 6103(l)(7) of the Internal Revenue Code, as the intent of the matching is to create a dialogue between the benefit recipient and the benefit provider.

(2) Verification of Social Security, Supplemental Security Income and Special Veterans Benefits Data

Unlike the income information supplied by the SSA and the IRS for tax purposes, SSA's social security, supplemental security income and special veterans benefits data may be disclosed to POAs. (The Foster Care Independence Act of 1999; Public Law 106–169 provided a new Title VIII of the Social Security Act, which authorized special benefits for certain World War II veterans.) Therefore, after receiving this data from the SSA and comparing it to tenant-reported income, HUD will disclose the SSA social security, supplemental security income and special veterans benefits data to POAs. These disclosures will include information on monthly social security, supplemental security income, and special veterans benefits data and, where applicable, income discrepancy information between tenant-reported data, as reported by POAs, and the income amounts provided by the SSA. POAs will use this information in periodic verifications of tenant incomes that are required to determine program eligibility and rental assistance amounts. HUD has implemented secure electronic facilities for transmitting social security, supplemental security income and special veterans benefits data to all POAs.

(3) Verification of SWICAs Data

HUD will disclose matching results for SWICAs wage and unemployment claim data directly to HAs. The comparison of SWICAs wage information and the tenant-reported data will reveal whether income verification is necessary. HAs must then obtain wage information directly from the tenants' employers, including information from prior years, when appropriate. The SWICAs unemployment claim data must be verified with the tenants. Verification of the income data with employers or the SWICAs would only be required if tenants dispute the SWICAs data.

(4) Verification of OPM Data

HUD will disclose matching results for OPM personnel data to POAs. The OPM data, when compared to the tenant-reported data, provides an indicator that income verification is necessary. The POA may then obtain current or prior wage information directly from employers when appropriate.

B. Administrative or Legal Actions

Regarding all the matching described in this notice, HUD anticipates that POAs will take appropriate actions in consultation with tenants to: (1) Resolve income disparities between tenant-reported and independent income source data, and (2) use correct income amounts in determining rental assistance.

HUD developed a Calendar Year 1998 Income Discrepancy Resolution Guide that prescribes procedures for resolving and reporting on the POA's resolution of income discrepancies concerning Federal tax information matching. The Guide also contains information concerning grievance, informal hearing and review procedures to resolve any disputes between POAs and tenants. A copy of the Guide may be accessed at http://www.hud.gov/reac/products/tass/tass_guide_poa.html. HUD plans to modify this Guide periodically. POAs must compute the rent in full compliance with all applicable occupancy regulations. POAs must ensure that they use the correct income and correctly compute the rent.

The POAs may not suspend, terminate, reduce, or make a final denial of any housing assistance to any tenant as the result of information produced by this matching program until: (a) the tenant has received notice from the POA of its findings and informing the tenant of the opportunity to contest such findings and (b) either the notice period provided in applicable regulations of the program, or 30 days, whichever is later, has expired. In most cases, POAs will resolve income discrepancies in consultation with tenants.

C. Public Reporting Burden on Computer Matching/Income Verification Results

The information collection requirements were approved by the Office of Management and Budget and assigned an OMB Approval Number 2507–003, with the expiration date of May 31, 2003.

IV. Records to Be Matched

SSA and IRS will conduct the matching of tenant SSNs and additional identifiers (such as surnames and dates of birth) to tenant data that HUD supplies from its system of records known as the Tenant Housing Assistance and Contract Verification Data (HUD/H–11). Within HUD, this system of records includes two automated systems known as the Multifamily Tenant Characteristics System (a system for programs under the Office of the Assistant Secretary for Public and Indian Housing) and the Tenant Rental Assistance Certification System (a system for programs under the Office of the Assistant Secretary for Housing—Federal Housing Commissioner). POAs provide HUD with the tenant data that is included in HUD/H–11.

The SSA will match the HUD/H–11 records to the SSA's Earnings Recording and Self-Employment Income System (HHS/SSA/OSR, 09–60–0059) (Earnings Record); Master Beneficiary Record (HHS/SSA/OSR, 09–60–0090) (MBR); and Supplemental Security Income Record (HHS/SSA/OSR, 09–60–0103) (SSR). The IRS will match the HUD/H–11 records to its Wage and Information Returns (IRP) Master File (Treas/IRS 22.061). The IRS also refers to this file as the Information Return Master File (IRMF).

HUD will place matching data into its system of records known as the Tenant Eligibility Verification Files (HUD/REAC–1). The HUD/REAC–1 records are specifically exempt from certain provisions of the Privacy Act, as described in notices published on February 28, 1994 (59 FR 9406) and March 30, 1994 (59 FR 14869).

HUD may also coordinate SWICAs income computer matches for its rental assistance programs using tenants' SSNs and surnames. SWICAs will match tenant records to machine-readable files of quarterly wage data and unemployment insurance benefit data.

Results from this matching will be provided to HUD or HAs, which will then determine whether tenants have unreported or underreported income. The matching will be done in accordance with a written agreement between the SWICAs and HUD.

In addition, tenants SSNs may be matched to the OPM's General Personnel Records (OPM/GOVT–1) and the Civil Service Retirement and Insurance Records System (OPM/Central-1). Tenant data may be matched to the SSA's Master Files of Social Security Number Holders (HHS/SSA/OSR, 09–60–0058) and Death Master Files for the purpose of validating SSNs contained in tenant records. These records will also be used to validate SSNs for all applicants, tenants, and household members who are six (6) years of age and over to identify noncompliance with program eligibility requirements. HUD will compare tenant SSNs provided by POAs to reveal duplicate SSNs and potential duplicate housing assistance.

V. Period of the Match

The computer matching program will be conducted according to agreements between HUD and the SSA, IRS, OPM, and SWICAs. The computer matching agreements for the planned matches will terminate either when the purpose of the computer matching program is accomplished, or 18 months from the date the agreement is signed, whichever comes first.

The agreements may be extended for one 12-month period, with the mutual agreement of all involved parties, if the following conditions are met:

(1) Within 3 months of the expiration date, all Data Integrity Boards review the agreement, find that the program will be conducted without change, and find a continued favorable examination of benefit/cost results; and

(2) All parties certify that the program has been conducted in compliance with the agreement.

The agreement may be terminated, prior to accomplishment of the computer matching purpose or 18 months from the date the agreement is signed (whichever comes first), by the mutual agreement of all involved parties within 30 days of written notice.

Dated: November 17, 2000.

Gloria R. Parker,

Chief Information Officer.

[FR Doc. 00–30065 Filed 11–28–00; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Extension of Approved Information Collection, OMB Number 1018–0092, on Permit/License Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service is announcing its intention to request renewal of its existing approval to collect certain information from applicants who wish to obtain a permit or license to conduct activities under a number of wildlife conservation laws, treaties and regulations. We will submit the collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory materials, contact the Collection Clearance Officer at the address listed below.

DATES: You must submit comments on or before January 29, 2000.

ADDRESSES: Send your comments and suggestions on specific requirements to the Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ; 4401 N. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: To request additional copies of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin, Collection Clearance Officer at 703–358–2287, or electronically to: rmullin@fws.gov.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and record keeping activities [see 5 CFR 1320.8(d)]. We plan to submit a request to OMB to renew its approval of the collection of information for the Service's license/permit application form number 3–200–1 through 3–200–3 and 3–200–26. We are requesting a 3-year term of approval for this information collection activity.

We modified the format of the first page of the application form so that the information fields in our Service-wide Permits Issuance and Tracking computer System. We also modified the format and content of the supplemental page(s) of the application forms for clarity and to be less burdensome to complete.

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond. The information collections in this program are part of a system of record covered by the Privacy Act [5 U.S.C. 552(a)].

The information on the application and the attachments will be used by the Service to review permit applications and allow the Service to make an assessment according to criteria established in various Federal wildlife conservation laws, treaties and regulations, on the issuance, suspension, revocation or denial of permits.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0092 which expires on 02/28/2001.

The information collection requirements in this submission implement the regulatory requirements of the Endangered Species Act (16 U.S.C. 1539), the Migratory Bird Treaty Act (15 U.S.C. 704), the Lacey Act (18 U.S.C. 42–44), the Bald and Golden Eagle Protection Act (16 U.S.C. 668), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), (27 UST 108), the Marine Mammal Protection Act (16 U.S.C. 1361–1407), and Wild Bird Conservation Act (16 U.S.C. 4901–4916), and are contained in Service regulations in Chapter I, Subchapter B of Title 50 Code of Federal Regulations (CFR). Common permit application and record keeping requirements have been consolidated in 50 CFR 13, and unique requirements of the various statutes in the applicable part as described in the table.

Permit number	Activity	Total number of respondents	Estimated time (hrs)	Total annual burden hours	Regulation
3–200–1	Federal Fish and Wildlife license/permit application form.	0*	.16	0	50 CFR Part 13
3–200–2	Designated Port Exemption Permit to authorize the use of nondesignated ports for fish and wildlife shipments.	635	2	1270	50 CFR Part 14
3–200–3	Import/Export License for commercial import/export fish and wildlife and/or fish and wildlife products.	4727	1	4727	50 CFR Part 14
3–200–26	CITES Export Permit for the export of skins/products of six native species: (bobcat, lynx, river otter, Alaskan gray wolf, Alaskan brown bear and American alligator).	2235	1	2235	50 CFR Part 14; 50 CFR Part 23

*Note: The general License/Permit Application form 3–200–1 is the first page of all 3–200 application forms. The 3–200–1 form is not generally used by itself, therefore, it has zero respondents.

Approval Number: 1018–0092 expires 02/28/2001.

Service Form Number: 3–200–1 through 3–200–3 and 3–200–26.

Frequency of Collection: 7597 applications annually.

Description of Respondents: Individuals, biomedical companies, circuses, zoological parks, botanical gardens, nurseries, museums, universities, scientists, antique dealers, Exotic pet industry, hunters, taxidermists, commercial importers/exporters of wildlife and plants, freight forwarders/brokers, local, State, tribal and Federal governments.

Total Annual Burden Hours: 7597.

Total Annual Responses: 7597.

*The total number of Annual Responses and Annual Burden Hours have been reduced because the 3–200–1 form is generally not used by itself, rather it is the first page of each of the other 3–200 License/Permit Application Forms. Therefore, there have been zero responses to the 3–200–1 form. The Annual Burden Hours to complete the first page of the 3–200 forms have already been accounted for in each of the other 3–200 License/Permit Application Forms.

Dated: November 22, 2000.

Rebecca A. Mullin,

U.S. Fish and Wildlife Service, Information Collections Officer.

[FR Doc. 00–30246 Filed 11–28–00; 8:45 am]

BILLING CODE 14310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Amendment to the Draft Recovery Plan for Gabbro Soil Plants of the Central Sierra Nevada Foothills for Review and Comment

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability, for public review, of an Amendment to the Draft Recovery Plan for Gabbro Soil Plants of the Central Sierra Nevada Foothills. This amendment to the draft recovery plan covers four plants listed as endangered, *Calystegia stebbinsii* (Stebbins' morning-glory), *Ceanothus roderickii* (Pine Hill ceanothus), *Fremontodendron californicum* ssp. *decumbens* (Pine Hill flannelbush), and *Galium californicum* ssp. *sierrae* (El Dorado bedstraw); one plant listed as threatened, *Senecio layneae* (Layne's butterweed); and one plant species of concern, *Wyethia reticulata* (El Dorado mule-ears). The amendment includes a revision of and correction to the preserve recommendation maps found in the draft plan. It also includes changes to the text in the recovery, stepdown narrative, and implementation chapters necessitated by changes in the preserve maps.

DATES: Comments on the amendment to the draft recovery plan must be received on or before January 29, 2001.

ADDRESSES: Copies of the amendment to the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, California (telephone (916) 414–6600). Requests for copies of the amendment to the draft recovery plan and written comments and materials regarding this amendment should be addressed to Wayne S. White, Field Supervisor, Ecological Services, at the above address.

FOR FURTHER INFORMATION CONTACT: Diane Elam or Kirsten Tarp, Fish and Wildlife Biologists, at the above address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The six species of plants covered in both the draft recovery plan and the amendment to the draft plan are primarily restricted to gabbro soils habitat in the central Sierra Nevada foothills of California. Conversion of habitat to urban uses has extirpated the listed species and species of concern

from a significant portion of their historic ranges. The remaining natural communities are highly fragmented, and many sites are vulnerable to extirpation from edge effects, impaired dispersal, or changes in fire regime.

The objectives of this amendment are to: (1) Make available to the public a revised preserve recommendation for the Pine Hill formation of western El Dorado County and (2) correct mistakes in mapping of preserve areas that appeared in the draft plan. The amendment includes the revised preserve recommendation maps and portions of the recovery chapter, stepdown narrative, and implementation schedule that were changed to correspond to the revised recommendation. In this amendment we have not addressed the public comments that were previously submitted on the draft plan. Those comments will, however, be addressed in the final recovery plan.

Public Comments Solicited

The Service solicits written comments on the amendment described above. All comments received by the date specified above will be considered prior to approval of the final recovery plan. Comments that were submitted to us during the March 8 to July 7, 1999, public comment period on the draft plan do not need to be resubmitted. These comments, as well as comments received on the amendment, will be addressed in the final recovery plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 21, 2000.

Elizabeth H. Stevens,

Acting Manager, California/Nevada Operations Office, Region 1, Fish and Wildlife Service.

[FR Doc. 00–30361 Filed 11–28–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council (Council) Meeting Announcement

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Council will meet at 1 p.m., December 6, 2000, to select North American Wetlands Conservation Act (NAWCA) proposals for recommendation to the Migratory Bird Conservation Commission. The meeting is open to the public.

DATES: December 6, 1 p.m.

ADDRESSES: The meeting will be held at the U.S. Department of the Interior, South Penthouse, 1849 C St., NW, Washington, DC 20240. The Council Coordinator is located at U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 110, Arlington, Virginia, 22203.

FOR FURTHER INFORMATION CONTACT: David A. Smith, Council Coordinator, (703) 358–1784.

SUPPLEMENTARY INFORMATION: In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement and management projects for recommendation to, and final funding approval by, the Migratory Bird Conservation Commission. Proposals require a minimum of 50 percent non-Federal matching funds.

Dated: November 22, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–30455 Filed 11–28–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Proposed Information Collection to be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed information collection described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Conservation Reserve Program (CRP) Contractee Perceptions on Environmental Benefits and Management.

OMB Approval No.: New collection.

Abstract: The Conservation Reserve Program (CRP) is the Nation's largest environmental program with enrollment currently over 30 million acres. Continuing refinement of conservation and management provisions by the U.S. Department of Agriculture (USDA) continue to give greater importance to wildlife habitat. Program participants who desire to renew contracts often are required to improve the quality or composition of vegetation on land enrolled in the program. An evaluation of contractee perceptions about the validity of these requirements will assist USDA in refinement of CRP management and conservation policies in the 2002 Farm Bill. Description of contractee opinions about personal, local, and regional effects of the program will be useful for documentation of environmental and social effects of the program.

Bureau Form No.: None.

Frequency: One time.

Description of Respondents: Individual or households.

Estimated Completion Time: 11.5 minutes per respondent (approximate).

Number of Respondents: 1400.

Burden hours: 268 hours. (The burden estimates are based on 11.5 minutes to complete each questionnaire and a 70% return rate.)

All comments concerning this notice should be addressed to Arthur W. Allen, Wildlife Biologist, (970–226–9312), (Arthur__allan@usgs.gov), U.S. Geological Survey, Biological Resources Division, Social, Economic and Institutional Analysis Section, 4512 McMurry Avenue, Fort Collins, CO 80525–3400.

Bureau Clearance Officer: John Cordyack (703) 648–7313.

Dated: November 14, 2000.

Dennis B. Fenn,

Chief Biologist.

[FR Doc. 00–30387 Filed 11–28–00; 8:45 am]

BILLING CODE 41310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–600–00–1430–ET–241A]

Notice of Intent To Amend the White River, Glenwood Springs, and Grand Junction Resource Management Plans To Revoke Oil Shale Withdrawals on Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) is proposing to prepare an Environmental Assessment and amend three Resource Management Plans (RMPs) to revoke withdrawals placed on BLM administered lands for the purpose of protecting the oil shale resource. The three RMPs are the White River RMP, Glenwood Springs RMP, and Grand Junction RMP; all in Colorado. Section 204 of the Federal Land Policy and Management Act of 1976 (FLPMA), requires that BLM continually review existing withdrawals to determine if they are still needed for their original purpose. This proposed revocation only pertains to oil shale lands withdrawn under Executive Order 5327 dated April 15, 1930, as amended, and Public Land Order 4522 dated September 13, 1968, as amended, and involves approximately 600,000 acres in Colorado.

These oil shale withdrawals are no longer needed because existing regulations, policies and land use decisions provide adequate protection and conservation of oil shale resources.

The oil shale withdrawals proposed for revocation are within the jurisdictional boundaries of the White River BLM Field Office, Glenwood Springs BLM Field Office, and Grand Junction BLM Field Office, and are located in the following townships.

T2N, R98W; T2N, R99W; T2N, R100W; T1N, R95W; T1N, R96W; T1N, R97W; T1N, R98W; T1N, R99W; T1N, R100W; T1S, R94W; T1S, R95W; T1S, R96W; T1S, R97W; T1S, R98W; T1S, R99W; T1S, R100W; T2S, R94W; T2S, R95W; T2S, R96W; T2S, R97W; T2S, R98W; T2S, R99W; T2S, R100W; T3S, R94W; T3S, R95W; T3S, R96W; T3S, R97W; T3S, R98W, T3S, R99W; T3S, R100W; T4S, R94W; T4S, R95W; T4S, R96W; T4S, R97W; T4S, R98W; T4S, R99W; T4S, R100W; T4S, R101W; T5S, R93W; T5S, R94W; T5S, R95W; T5S, R96W; T5S, R97W; T5S, R98W; T5S, R99W; T5S, R100W; T5S, R101W; T6S, R94W; T6S, R95W; T6S, R96W; T6S, R97W; T6S, R98W; T6S, R99W; T6S, R100W; T6S, R101W; T7S, R96W; T7S, R97W; T7S, R98W; T7S, R99W; T7S, R100W; T7S, R101W; T8S, R99W; T8S, R100W.

The public is invited to comment on this proposal and to contact the BLM should they desire further information. A 30 day period for receiving comments begins with publication of this notice in the **Federal Register**. Comments received by the public as a result of this notice and news releases in local media will be considered in developing the Environmental Assessment.

ADDRESSES: Address all comments concerning this notice to Larry Porter, Bureau of Land Management, 2815 H. Road, Grand Junction, CO 81506. Electronic mail can be sent to: Larry_Porter@co.blm.gov.

FOR FURTHER INFORMATION CONTACT: Larry Porter at (970) 244–3012.

SUPPLEMENTARY INFORMATION: This withdrawal revocation proposal does not apply to the Naval Oil Shale Reserve #1 and #3 lands that were recently transferred from the U.S. Department of Energy to the BLM. Management decisions for these lands will be made through a separate planning process.

There are several public land orders and executive orders which relate to the withdrawal of oil shale land. Some of the orders identify how the withdrawals will be administered and their relationship to development of other minerals. This proposed revocation only pertains to oil shale values in lands withdrawn under Executive Order 5327 dated April 15, 1930, as amended, and Public Land Order 4522 dated September 13, 1968, as amended. Oil Shale and associated minerals have been classified as leasable, and as such they are managed with well defined procedures. The oil shale values in these withdrawn lands are adequately protected and administered through existing BLM regulations, planning decisions, and policy. The withdrawals are no longer needed for their original purpose and intent, and should be revoked in their entirety.

Dated: November 22, 2000.

Richard M. Arcand,

Assistant Manager, Northwest Center Office.

[FR Doc. 00–30443 Filed 11–28–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–160–1220–00]

Amendment of Meeting Notice for Central California Resource Advisory Council

This is to amend the meeting place address listed in the notice that was already published.

DATES: Thursday and Friday, November 30–December 1, 2000.

ADDRESSES: BLM California State Office, 2800 Cottage Way, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308, telephone 661–391–6012.

Dated: November 16, 2000.

Ron Fellows,

Field Manager.

[FR Doc. 00–30388 Filed 11–28–00; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Central Gulf of Mexico, Oil and Gas Lease Sale 178

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of the proposed notice of sale, and notice of intent to hold two workshops to discuss several new provisions in the proposed notice

Gulf of Mexico Outer Continental Shelf (OCS), Notice of Availability of the proposed Notice of Sale for proposed Oil and Gas Lease Sale 178 in the Central Gulf of Mexico. This Notice is published pursuant to 30 CFR 256.29(c) as a matter of information to the public.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice. The proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

The proposed Notice of Sale for Sale 178 and a ''Proposed Sale Notice Package'' containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood

Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519. These documents can also be found on the MMS Homepage Address on the Internet: http://www.mms.gov.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for March 28, 2001.

Workshops to Discuss Several New Provisions in the Proposed Notice

The MMS will hold two workshops to discuss with interested parties a number of new provisions being considered for proposed Lease Sale 178 in the Central Gulf of Mexico:

- deepwater royalty relief for leases in 800 meters water depth and greater;
- shallow-water deep-gas royalty relief for leases in water depths less than 200 meters (where natural gas wells have been drilled 15,000 feet or greater and commence production during the primary term of the lease);
- subsalt lease term extension for leases in water depths less than 400 meters (with a primary term of 5 years), providing for a two-year extension beyond the 5-year primary term if a subsalt well has been drilled during the primary term; and
- other proposed terms and conditions.

Workshops to Discuss Provisions of the Proposed Rule Regarding Discretionary Royalty Relief

In addition, the MMS will hold two workshops to discuss with interested parties provisions of the proposed rule at 30 CFR, part 203, published in the **Federal Register** on November 16, 2000, regarding discretionary royalty relief for leases in 200 meters water depth and greater. These workshops will follow the Proposed Notice Workshops mentioned above, and at the same location.

Date, Time, and Location of Workshops:

December 12, 2000

Minerals Management Service, Room 111, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123.
Provisions of Sale 178 proposed Notice of Sale, 9 a.m. until Noon
Provisions of discretionary royalty relief proposed rule, 1 to 4 p.m.
and

December 14, 2000

Sheraton North Houston (at George Bush Intercontinental Airport), 15700 John F. Kennedy Boulevard, Houston, Texas 77032, Hotel phone—(281) 442–5100.
Provisions of the Sale 178 proposed Notice of Sale, 9 a.m. until Noon
Provisions of discretionary royalty relief proposed rule, 1 to 4 p.m.

Attendees need not register prior to attending either meeting. Appropriate MMS personnel will be present at both workshops to answer questions regarding any aspect of the proposed Notice in the morning workshops, and questions regarding the proposed rule regarding discretionary royalty relief in the afternoon workshops.

Potential bidders in Sale 178 should note that sale terms and conditions and other information presented in the proposed Notice may be revised following consideration of comments received during consultation with interested parties on the proposed Notice. A decision on the final Notice is scheduled for February 2001.

For additional information, please call Mr. Charles Hill (504) 736–2795.

Dated: November 22, 2000.

Thomas R. Kitsos,

Director, Minerals Management Service.

[FR Doc. 00–30413 Filed 11–28–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

CALFED Bay-Delta Program Policy Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The CALFED Bay-Delta Program Policy Group will meet on December 13, 2000. The agenda for the Policy Group meeting will include discussions about CALFED's: Record of Decision Commitments; Ecosystem Restoration 2001 Funding Package; and Operation and Implementation Budget. This meeting is open to the public. Interested persons may make oral statements to the CALFED Bay-Delta Program Policy Group or may file written statements for consideration.

DATES: The CALFED Bay-Delta Program Policy Group meeting will be held from 1 p.m. to 5 p.m. on Wednesday, December 13, 2000.

ADDRESSES: This meeting will meet at the Sacramento Convention Center, 1400 J Street, Room 103–104, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Rick Breitenbach, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes a joint State-Federal process to develop and implement long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the direction of the CALFED Policy Group.

Dated: November 22, 2000.

Lester A. Snow,

Regional Director.

[FR Doc. 00–30402 Filed 11–28–00; 8:45 am]

BILLING CODE 4310–MP–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–702 (Review)]

Ferrovanadium and Nitrided Vanadium From Russia

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty order on ferrovanadium and nitrided vanadium from Russia.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's

Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: November 21, 2000.

FOR FURTHER INFORMATION CONTACT: Gail Burns (202–205–2501), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2000, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (65 F.R. 55047, September 12, 2000). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

Participation in the Review and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the review will be placed in the nonpublic record on February 23, 2001, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on March 15, 2001, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 5, 2001. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 8, 2001, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is March 6, 2001. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is March 27, 2001; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before March 27, 2001. On April 20, 2001, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 24, 2001, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: November 22, 2000.
By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–30409 Filed 11–28–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: December 11, 2000, 10:00 am, U.S. Department of Labor, C–5515-Conference Room 1A, 200 Constitution Ave., NW, Washington, DC 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to

19 U.S.C. 2155(f) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Jorge Perez-Lopez, Director, Office of International Economic Affairs; Phone: (202) 219–7597.

Dated: Signed at Washington, DC this 22d day of November, 2000.

MacArthur DeShazer,

Associate Deputy Under Secretary, International Affairs.

[FR Doc. 00–30411 Filed 11–28–00; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0092(2001)]

Lead in General Industry Standard; Extension of the Office of Management of Budget's Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information burden is correct.

DATES: Submit written comments on or before January 29, 2001.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0092(2001), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Todd R. Owen, Directorate of Policy, OSHA, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information-collection requirements specified by the Standard is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Todd Owen at (202) 693–2444. For electronic copies of this ICR, contact OSHA on the Internet at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act of 1970 (the ''Act'') authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The basic purpose of the information-collection requirements in the Lead in General Industry Standard (the ''Standard'') is to document that employers in general industry are providing their employees with protection from over exposure to lead. These paperwork requirements permit employers, employees and their designated representatives, OSHA, and other specified parties to determine the effectiveness of an employer's lead-control program. Accordingly, the requirements ensure that employees exposed to lead receive all of the protection afforded by the Standard.

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection-of-information (paperwork) requirements contained in the Standard. The Agency will summarize the comments submitted in response to this notice and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

II. Desired Focus of Comments

The Agency has a particular interest in comments on the following issues:

- Whether the information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Current Action

OSHA solicits comment concerning its request for an extension of the information-collection requirements contained in its Lead in General Industry Standard at 29 CFR 1910.1025.

Type of Review: Extension of currently approved information-collection requirements.

Title: Lead in General Industry (29 CFR 1910.1025).

OMB Number: 1218–0092.

Affected Public: Business or other for-profit organizations; Federal, State, Local, or Tribal governments.

Number of Respondents: 233.

Frequency: On occasion.

Average Time per Response: Varies from 5 minutes to maintain records to 1.5 hours for employee training or medical evaluation.

Estimated Total Burden Hours: 35,523.

Estimated Cost (Operation and Maintenance): $1,625,143.

IV. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No 3–2000 (65 FR 50017).

Signed at Washington, DC on November 21, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–30410 Filed 11–28–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–1–89]

Intertek Testing Services, NA, Inc., Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the applications of Intertek Testing Services, NA, Inc. (ITSNA), for expansion of its recognition to use additional standards, sites, and programs.

EFFECTIVE DATE: This recognition becomes effective on November 29, 2000 and, unless modified in accordance with 29 CFR 1910.7, continues in effect while ITSNA remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of Intertek Testing Services, NA, Inc. (ITSNA), as a Nationally Recognized Testing Laboratory (NRTL). ITSNA's expansion of recognition covers the use of additional test standards, sites, and programs.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, OSHA can accept products ''properly certified'' by the NRTL. OSHA processes applications related to an NRTL's recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish a public notice of its final decision on an application.

ITSNA submitted several requests to expand its recognition to use additional test standards, testing facilities (sites), and supplemental programs (see Exhibits 30B–30H). As part of processing these requests, OSHA performed on-site reviews of ITSNA's testing and certification sites (see Exhibit 31A–31E). In the on-site review reports, the NRTL Program staff recommended granting the expansion requests but included certain limitations on intrinsic testing that will apply to all hazardous location testing. These limitations are described under *Limitations* below.

OSHA published the notice of its preliminary findings on the expansion requests in the **Federal Register** (see 63 FR 69676, 12/17/98). The notice also covered ITSNA's request for renewal and included a preliminary finding that ITSNA could meet the requirements in 29 CFR 1910.7 for renewal and expansion of its recognition, subject to certain conditions. The notice requested submission of any public comments by February 16, 1999. OSHA received no comments concerning these applications.

The Agency delayed publication of the final notice for the renewal and expansion pending resolution of certain requests made by ITSNA. OSHA cannot disclose details on these requests since the information could be confidential and privileged to ITSNA and therefore protected under the Freedom of Information Act (FOIA). The NRTL only recently submitted necessary documentation for this pending matter to OSHA, but the Agency has not yet rendered its final decision. OSHA is proceeding with the expansion since the matter under consideration, at this time, impacts the renewal of ITSNA. As stated in the preliminary notice, ITSNA retains its recognition pending OSHA's final decision in the renewal process.

ITSNA's expansion requests covered an additional 114 test standards. The NRTL Program staff initially determined that two of the standards were not ''appropriate test standards,'' within the meaning of 29 CFR 1910.7(c). The staff makes such determinations in processing expansion requests from any NRTL. In preparing this final notice, the staff determined that 5 of the standards listed in the preliminary notice have been withdrawn by the standards organizations and, as a result, are also not ''appropriate'' for recognition. Therefore, OSHA includes 107 test standards for the expansion. Also note that the UL 2161 (Neon Transformers and Power Supplies) test standard was excluded from the notice of the preliminary finding published on December 17, 1998. The NRTL Program staff excluded this test standard from the notice pending publication of the resolution of a comment, concerning this test standard, received on a notice for another NRTL (see 64 FR 33913, 6/24/99). If publication of the resolution had already occurred, OSHA would have included the standard in the December 17 notice.

OSHA is recognizing the additional ITSNA sites listed below. All ITSNA sites listed in this notice are recognized for use of the supplemental programs. Also, the recognition of each of these sites will be limited to performing testing to the test standards for which OSHA has recognized ITSNA, and for which the site has the proper capability and control programs.

Under its current operations as an NRTL, ITSNA authorizes the use of the ''ETL'' certification mark or certifications only from its Cortland location. Therefore, OSHA does not recognize any other ITSNA sites for certifying products under ITSNA's NRTL operations. In addition, only the Vancouver, Antioch (formerly Pittsburg), and Madison sites identified below authorize the use of the ''WHI'' (Warnock Hersey) certification mark or certifications. The Agency had proposed a limitation on the type of testing that ITSNA could perform at its Vancouver, Antioch, and Madison sites. However, OSHA does not impose this limitation because it would be inconsistent with recognition granted to other NRTLs that operate multiple sites.

In the **Federal Register** notice of the preliminary finding, we stated, and repeat here for emphasis, that the recognition of ITSNA applies only to the administrative, testing, and certification facilities that are part of the ITSNA organization and operations as an NRTL. No part of the recognition applies to any other part of ITSNA, or to any other legal entity, subsidiary, facility, operation, unit, division, or department of Intertek Testing Services Ltd. (ITSLtd), which encompasses ITSNA.

The most recent notices published by OSHA, prior to the December 17 preliminary notice, for ITSNA's recognition covered an expansion for additional sites, which OSHA announced on August 8, 1997 (62 FR 42829) and granted on December 1, 1997 (62 FR 63562).

You may obtain or review copies of all public documents pertaining to the applications by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, DC 20210. You should refer to Docket No. NRTL–1–89, the permanent record of public information on the ITSNA recognition.

The current addresses of the ITSNA testing facilities recognized by OSHA are:

*ITSNA Atlanta, 1950 Evergreen Boulevard, Duluth, Georgia 30096
ITSNA Boxborough, 70 Codman Hill Road, Boxborough, Massachusetts 01719**
ITSNA Cortland, 3933 U.S. Route 11, Cortland, New York 13045
*ITSNA Antioch (formerly Pittsburg), 2200 Wymore Way, Antioch, California 94509**
ITSNA San Francisco, 1365 Adams Court, Menlo Park, CA 94025
*ITSNA Vancouver, 211 Schoolhouse Street, Coquitlam, British Columbia, V3K 4X9 Canada
ITSNA Hong Kong, 2/F., Garment Centre, 576 Castle Peak Road, Kowloon, Hong Kong
ITSNA Taiwan, 14/F Huei Fung Building, 27, Chung Shan North Road, Sec. 3, Taipei 10451, Taiwan

The current addresses of the additional ITSNA testing sites covered by the expansion of recognition are:

ITSNA Los Angeles, 27611 LaPaz Road, Suite C, Laguna Niguel, California 92677
*ITSNA Madison, 8431 Murphy Drive, Middleton, Wisconsin 53562
ITSNA Minneapolis (Oakdale), 7435 Fourth Street North, Lake Elmo, Minnesota 55042
ITSNA Totowa, 40 Commerce Way, Unit B, Totowa, New Jersey 07512
*One of the three sites that currently authorizes the use of the ''WHI'' certification mark
**Different address appeared in the notice of preliminary finding

Programs and Procedures

OSHA is granting the request by ITSNA to use the following supplemental programs, based upon the criteria detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). This notice lists nine (9) programs and procedures (collectively, programs), eight of which an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition will always include the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. The on-site review report indicates that ITSNA appears to meet the criteria for use of all the following supplemental programs and procedures:

Program 2: Acceptance of testing data from independent organizations, other than NRTLs.
Program 3: Acceptance of product evaluations from independent organizations, other than NRTLs.
Program 4: Acceptance of witnessed testing data.
Program 5: Acceptance of testing data from non-independent organizations.
Program 6: Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing).
Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme.
Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

We had included Program 7 in the notice of preliminary finding. However, this program was not recommended by the NRTL Program assessment staff, and so we do not include it above.

OSHA developed the program descriptions to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, OSHA does treat these programs as one of the three elements that defines an NRTL's scope of recognition.

The Agency has no requirements to give public notice when granting requests to use these programs. However, we typically note our approval in a notice when processing such requests in conjunction with a regular application.

Additional Condition

As mentioned in the preliminary notice, ITSNA currently owns a manufacturer of laboratory test equipment, Compliance Design (mistakenly called Design Engineering in the preliminary notice). Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials [''products''] being tested for these purposes.

In accordance with OSHA policy, if ITSNA were to certify the type of products manufactured or sold by Compliance Design, then ITSNA would not meet the requirement in 29 CFR 1910.7 for complete independence. Also, ITSNA's parent company is Intertek Testing Services, Ltd. (ITSLtd). If ITSNA were to certify a type of product for an entity owned by ITSLtd, and that entity is also a supplier of that type of product, then ITSNA would not be ''completely independent.'' The NRTL Program staff believes that such situations can occur due to the large number of products for which OSHA has recognized ITSNA and the possible current or future interests of ITSLtd. Although ITSNA may not directly own or be owned by such an entity, both would be fully within the same organization. Mere legal separation of the entities does not suffice for purposes of meeting the requirement for complete independence.

Due to the foregoing, OSHA is imposing a condition on ITSNA's recognition to mitigate or eliminate situations that will cause it to fail to meet the independence requirement of 29 CFR 1910.7. This condition, listed first under *Conditions* below, applies solely to ITSNA's operations as an NRTL, and will be in addition to the other conditions below that OSHA normally imposes in its recognition of an organization as an NRTL. The Agency would re-evaluate this condition if it were to determine that ITSNA or its owner does in fact have material interests that could create an undue influence on ITSNA's NRTL operations. OSHA would provide the NRTL an opportunity to take corrective action, but if not adequately resolve, the Agency would commence its recognition revocation procedures.

Final Decision and Order

The NRTL Program staff has examined the applications, the assessor's reports, and other pertinent information. Based upon this examination and the assessor's recommendation, OSHA finds that Intertek Testing Services NA, Inc., has met the requirements of 29 CFR 1910.7 for expansion of its recognition to include the above additional 4 sites and the additional 107 test standards, listed below, subject to the limitations and conditions, also listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of ITSNA, subject to these limitations and conditions.

Limitations

Recognition of Facilities

OSHA hereby expands the recognition of ITSNA to include the testing sites in Los Angeles, Madison, Minneapolis, and Totowa. Similar to other NRTLs that operate multiple sites, the Agency's recognition of any ITSNA testing site is limited to performing testing to the test standards for which OSHA has recognized ITSNA, and for which the site has the proper capability and control programs. In addition, under ITSNA's current mode of operation, only its Cortland location may authorize the use of the ''ETL'' certification mark or certifications. Also, only its Vancouver, Antioch (formerly Pittsburg), and Madison sites may authorize the use of the ''WHI'' certification mark or certifications.

Recognition of Test Standards

OSHA hereby expands the recognition of the ITSNA for testing and certification of products to demonstrate conformance to the 107 test standards listed below. OSHA has determined that each test standard meets the requirements for an appropriate test standard, within the meaning of 29 CFR 1910.7(c).

The Agency's recognition of ITSNA, or any NRTL, for a particular test standard is always limited to equipment or materials (products) for which OSHA standards require third party testing and

certification before use in the workplace. As a result, OSHA's recognition of an NRTL for a test standard excludes any product(s), falling within the scope of the test standard, for which OSHA has no such requirements.

ANSI C37.013 AC High-Voltage Generator Circuit Breakers Rated on a Symmetrical Current [2]
ANSI C37.17 Trip Devices for AC and General Purpose DC Low-Voltage Power Circuit Breakers [2]
ANSI C37.18 Enclosed Field Discharge Circuit Breakers for Rotating Electric Machinery [2]
ANSI C37.21 Control Switchboards [2]
ANSI C37.29 Low-Voltage AC Power Circuit Protectors Used in Enclosures [2]
ANSI C37.38 Gas-Insulated, Metal-Enclosed Disconnecting, Interrupter and Grounding Switches [2]
ANSI C37.46 Power Fuses and Fuse Disconnecting Switches [2]
ANSI C37.50 Low-Voltage AC Power Circuit Breakers Used in Enclosures—Test Procedures [2]
ANSI C37.51 Metal-Enclosed Low-Voltage AC Power Circuit-Breaker Switchgear Assemblies—Conformance Test Procedures [2]
ANSI C37.55 Metal-Clad Switchgear Assemblies—Conformance Test Procedures [2]
ANSI C37.57 Metal-Enclosed Interrupter Switchgear Assemblies—Conformance Testing [2]
ANSI C37.90 Relays and Relay Systems Associated with Electric Power Apparatus [2]
ANSI C37.121 Unit Substations—Requirements [2]
ANSI C57.12.00 Distribution, Power and Regulating Transformers—General Requirements [2]
ANSI C57.13 Instrument Transformers—Requirements [2]
ANSI C62.11 Metal-Oxide Surge Arresters for AC Power Circuits [2]
ANSI K61.1 Storage and Handling of Anhydrous Ammonia (CGA G–2.1)
ANSI S82.02.01 Electrical and Electronic Test, Measuring, Control and Related Equipment: General Requirements
ANSI Z21.24 Metal Connectors for Gas Appliances
ANSI Z21.50 Vented Decorative Gas Appliances
ANSI Z21.57 Recreational Vehicle Cooking Gas Appliances
ANSI Z21.58 Outdoor Cooking Gas Appliances
ANSI Z21.60 Decorative Gas Appliances for Installation in Solid-Fuel Burning Fireplaces
ANSI Z21.72 Portable Camp Cook Stoves for Use With Propane Gas
ANSI Z83.6 Gas-Fired Infrared Heaters
ANSI Z83.7 Gas-Fired Construction Heater
UL 5A Nonmetallic Surface Raceways and Fittings
UL 8 Foam Fire Extinguishers
UL 123 Oxy-Fuel Gas Torches
UL 180 Liquid-Level Indicating Gauges and Tank-Filling Signals for Petroleum Products
UL 217 Single and Multiple Station Smoke Detectors
UL 218 Fire Pump Controllers
UL 228 Door Closers-Holders, With or Without Integral Smoke Detectors
UL 234 Low Voltage Lighting Fixtures for Use in Recreational Vehicles
UL 248–1 Low-Voltage Fuses—Part 1: General Requirements
UL 248–2 Low-Voltage Fuses—Part 2: Class C Fuses
UL 248–3 Low-Voltage Fuses—Part 3: Class CA and CB Fuses
UL 248–4 Low-Voltage Fuses—Part 4: Class CC Fuses
UL 248–5 Low-Voltage Fuses—Part 5: Class G Fuses
UL 248–6 Low-Voltage Fuses—Part 6: Class H Non-Renewable Fuses
UL 248–7 Low-Voltage Fuses—Part 7: Class H Renewable Fuses
UL 248–8 Low-Voltage Fuses—Part 8: Class J Fuses
UL 248–9 Low-Voltage Fuses—Part 9: Class K Fuses
UL 248–10 Low-Voltage Fuses—Part 10: Class L Fuses
UL 248–11 Low-Voltage Fuses—Part 11: Plug Fuses
UL 248–12 Low-Voltage Fuses—Part 12: Class R Fuses
UL 248–13 Low-Voltage Fuses—Part 13: Semiconductor Fuses
UL 248–14 Low-Voltage Fuses—Part 14: Supplemental Fuses
UL 248–15 Low-Voltage Fuses—Part 15: Class T Fuses
UL 248–16 Low-Voltage Fuses—Part 16: Test Limiters
ANSI/NEMA 250 Enclosures for Electrical Equipment
UL 252A Compressed Gas Regulator Accessories
UL 300 Fire Testing of Fire Extinguishing Systems for Protection of Restaurant Cooking Areas
UL 307B Gas Burning Heating Appliances for Manufactured Homes and Recreational Vehicles
UL 391 Solid-Fuel and Combination-Fuel Control and Supplementary Furnaces
UL 588 Christmas-Tree and Decorative-Lighting Outfits
UL 635 Insulating Bushings
UL 668 Hose Valves For Fire Protection Service
UL 696 Electric Toys
UL 697 Toy Transformers
UL 783 Electric Flashlights and Lanterns for Use in Hazardous (Classified) Locations[1]
UL 791 Residential Incinerators
UL 870 Wireways, Auxiliary Gutters, and Associated Fittings
UL 1018 Electric Aquarium Equipment
UL 1023 Household Burglar-Alarm System Units
UL 1090 Electric Snow Movers
UL 1247 Diesel Engines for Driving Centrifugal Fire Pumps
UL 1248 Engine-Generator Assemblies for Use in Recreational Vehicles
UL 1283 Electromagnetic-Interference Filter
UL 1363 Relocatable Power Taps
UL 1419 Professional Video and Audio Equipment
UL 1431 Personal Hygiene and Health Care Appliances
UL 1472 Solid-State Dimming Controls
UL 1482 Solid Fuel Room Type Heaters
UL 1484 Residential Gas Detectors
UL 1635 Digital Alarm Communicator System Units
UL 1651 Optical Fiber Cable
UL 1693 Electric Radiant Heating Panels and Heating Panel Sets
UL 1694 Tests for Flammability of Small Polymeric Component Materials
UL 1703 Flat Plate Photovoltaic Modules and Panels
UL 1740 Industrial Robots and Robotic Equipment
UL 1773 Termination Boxes
UL 1776 High-Pressure Cleaning Machines
UL 1786 Nightlights
UL 1821 Thermoplastic Sprinkler Pipe and Fittings for Fire Protection Service
UL 1838 Low Voltage Landscape Lighting Systems
UL 1863 Communication Circuit Accessories
UL 1889 Commercial Filters for Cooking Oil
UL 1951 Electric Plumbing Accessories
UL 1963 Refrigerant Recovery/Recycling Equipment
UL 1971 Signaling Devices for the Hearing Impaired
UL 1977 Component Connectors for Use in Data, Signal, Control and Power Applications
UL 1981 Central Station Automation Systems
UL 2024 Optical Fiber Cable Raceway
UL 2034 Single and Multiple Station Carbon Monoxide Detectors
UL 2083 Halon 1301 Recovery/Recycling Equipment
UL 2096 Commercial/Industrial Gas and/or Gas Fired Heating Assemblies with Emission Reduction Equipment

UL 2106 Field Erected Boiler Assemblies
UL 2157 Electric Clothes Washing Machines and Extractors
UL 2158 Electric Clothes Dryers
UL 2161 Neon Transformers and Power Supplies
UL 2250 Instrumentation Tray Cable
FMRC 3600 Electrical Equipment for Use in Hazardous (Classified) Locations, General Requirements [1]
FMRC 3610 Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II and III, Division 1 Hazardous (Classified) Locations [1]
FMRC 3611 Electrical Equipment for Use in Class I, Division 2; Class II, Division 2; and Class III, Division 1 and 2 Hazardous Locations [1]
FMRC 3615 Explosionproof Electrical Equipment, General Requirements
UL 8730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
Testing and certification of products under this test standard is limited to Class I locations. See also general note and limitation for hazardous location testing.[1]
These standards are approved for equipment or materials intended for use in commercial and industrial power system applications. These standards are not approved for equipment or materials intended for use in installations that are excluded by the provisions of Subpart S in 29 CFR 1910, in particular Section 1910.302(b)(2).[2]

Note 1: All safety testing for Class I locations is limited to recognized ITSNA sites properly pre-qualified by ITSNA. Also see general limitation on intrinsic testing below.

Note 2: Testing and certification of gas operated equipment is limited to equipment for use with ''liquefied petroleum gas.''

The designations and titles of the above test standards were current at the time of the preparation of this current notice.

Many of the above test standards are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards developing organization (*e.g.,* UL 22) for some of these standards, as opposed to the ANSI designation (*e.g.,* ANSI/UL 22). Under our procedures, an NRTL recognized for an ANSI approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of whether it is currently recognized for the proprietary or ANSI version. Contact ANSI or the ANSI web site to find out whether or not a standard is currently ANSI approved.

As previously noted, the NRTL Program staff recommended certain limitations on intrinsic testing, which is partly described in the note and footnote above and more fully below. These limitations will apply to the recognition of all test standards that involve intrinsic testing and for which ITSNA is recognized.

ITSNA may perform safety testing for hazardous location products only at the specific ITSNA sites that OSHA has recognized, and that have been pre-qualified by the ITSNA Chief Engineer. In addition, all safety test reports for hazardous location products must undergo a documented review and approval at the Cortland testing facility by a test engineer qualified in hazardous location safety testing, prior to ITSNA's initial or continued authorization of the certifications covered by these reports. All the above limitations apply solely to ITSNA's operations as an NRTL.

Conditions

ITSNA must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

ITSNA may not test and certify any products for a client that is a manufacturer or vendor, and that is either owned in excess of 2% by ITSLtd, or affiliated organizationally with ITSNA, including Compliance Design.

OSHA must be allowed access to ITSNA's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If ITSNA has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

ITSNA must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ITSNA agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

ITSNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

ITSNA will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

ITSNA will continue to meet the requirements for recognition in all areas where it has been recognized; and

ITSNA will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, DC this 20 day of November, 2000.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 00–30412 Filed 11–28–00; 8:45 am]

BILLING CODE 4510–26–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION

''Reconstruction of the American Canal Project,'' Located in El Paso, Texas; Notice of Draft Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of draft Finding of No Significant Impact for a draft Environmental Assessment.

SUMMARY: Based on a draft environmental assessment (EA), the United States Section, International Boundary and Water Commission (USIBWC), finds that the proposed action of reconstruction of the existing American Canal is not a major federal action that would have a significant adverse effect on the quality of the human environment. An environmental impact statement will not be prepared for the project unless additional information which may affect this decision is brought to the attention of the USIBWC within thirty (30) days of the date of this Notice. The draft Finding of No Significant Impact (FONSI) and draft EA have been forwarded to the United States Environmental Protection Agency and various Federal, State and local agencies and interested parties. The draft FONSI and EA are also available at the reference desk at University of Texas At El Paso Library and El Paso Main Library, and on the USIBWC Home Page at http://www.ibwc.state.gov under ''What's New.'' A limited number of copies of these documents are available

for review and comment upon request from USIBWC at the following address: Ms. Sylvia Waggoner, Division Engineer, USIBWC, 4171 North Mesa Street, C–310, El Paso, TX 79902. Telephone: (915) 832–4740, e-mail: sylviawaggoner@ibwc.state.gov.

SUPPLEMENTARY INFORMATION:

Proposed Action

The proposed rehabilitation and enlargement of the 1.98-mile-long American Canal (also known as Reach F of the Rio Grande American Canal Extension or RGACE) involves demolishing the deteriorating concrete open channel segments of the canal and replacing them with reinforced concrete-lined canal segments. The USIBWC is authorized under the Rio Grande American Canal Extension Act of 1990 (the Act of 1990), Public Law 101–438, dated October 15, 1990, to construct, operate, and maintain an extension of the existing American Canal in El Paso, Texas; which ''would provide for a more equitable distribution of waters between the United States and Mexico, reduce water losses, and minimize many hazards to public safety.''

Water for both irrigation and domestic use in El Paso County is diverted into the American Canal at the American Dam located on the Rio Grande approximately 3 miles upstream from downtown El Paso. The American Dam and American Canal were constructed from 1937 to 1938, within United States territory to divert United States waters away from the Rio Grande, and to allow into the international reach of the Rio Grande only those waters assigned to the United Mexican States under the Convention of 1906. This ensured that United States waters diverted at the American Dam would be completely retained within the United States.

In the Act of 1990, the United States Congress also authorized the negotiation of international agreements for the RGACE to convey Mexican waters authorized under the 1906 Convention. In view of the conveyance water losses and the safety issues inherent in Mexico's existing canal system, the RGACE was designed to accommodate Mexico's annual 60,000 acre-foot allotment of water at 335 cubic feet per second (cfs), should Mexico request its allotment delivered at this location.

Alternatives Considered

Five alternatives, including the Open Channel Alternative (the Proposed Action Alternative) and the No Action Alternative, were considered during the preparation of the environmental assessment. All four action alternatives include (1) increasing the canal capacity to 1535 cfs, (2) demolition of existing canal structures and open channel concrete lining, (3) reconstructing and enlarging the 400-foot open channel segment immediately downstream from the headgates and the 100-foot open channel segment upstream from the gaging station, (4) not repairing or replacing the two closed conduit segments under West Paisano Drive, (5) installing fences to minimize entrance into the canal, (6) installing safety equipment to reduce canal drownings, (7) removing the Smelter Bridge and the abutments of Hart's Mill Bridge, and (8) providing mitigation of the loss of the Smelter Bridge by preparing Historic American Engineering Record (HAER) Level III documentation of the structure (including existing and original construction drawings, captioned photographs, and written data). The alternatives are summarized below:

Alternative 1—Closed Conduit Alternative: All existing open channel segments (Upper, Middle, and Lower) between the American Dam and International Dam would be replaced with closed conduits, with the two excepted open reaches in the Upper Open Channel segment. This Alternative would be the most expensive to construct and would lose the historic open visual character of the canal.

Alternative 2—Closed Conduit/Open Channel Alternative A: The Middle Open Channel segment would be replaced with a closed conduit. The Upper and Lower Open Channel segments would be reconstructed and enlarged. This alternative would accomplish all the objectives, but would lose the historic open visual character of the canal in the segment most visible to the public. It would likely triple the number of pedestrian traffic fatalities on nearby highways.

Alternative 3—Closed Conduit/Open Channel Alternative B: The Middle and Lower Open Channel segments would be replaced with closed conduits. The Upper Open Channel segment would be reconstructed and enlarged. This alternative would accomplish all the objectives, but at a cost second highest among the action alternatives. It would also likely triple the number of pedestrian traffic deaths on nearby highways.

Alternative 4—Open Channel Alternative (the Proposed Action Alternative): The Upper, Middle, and Lower Open Channel segments would be reconstructed and enlarged. This Alternative would accomplish all the necessary objectives at the lowest construction cost. It would result in the lowest number of pedestrian traffic fatalities on nearby highways. Though the original canal lining would be replaced, this Alternative would preserve the visual open character of the canal.

Alternative 5—No Action Alternative: The three open channel segments would be left untouched, with no replacements, enlargements, or repairs of any canal segments. While this alternative preserves intact the historic Smelter Bridge, it does not accomplish any of the stated objectives. The annual number of drownings in the Canal would not be reduced. Without reconstruction or major repair of the canal, a serious canal failure is likely within the next five years, especially during the peak irrigation period with the highest canal flow. Such a canal failure would likely close the American Canal for at least one month during costly emergency repairs. If the canal flow was disrupted due to a month of repairs, the El Paso Water Utilities production of potable water would be reduced by 80 to 120 million gallons per day, and over a thousand El Paso County farmers could lose their crops, likely resulting in up to 500 bankruptcies. The No Action Alternative is not considered to be a viable alternative.

Environmental Assessment (EA)

The USIBWC completed the Draft EA for the proposed action on August 22, 2000. The Draft EA is available for review and comment at the previously-cited address.

The Draft EA finds that the proposed action does not constitute a major federal action that would cause a significant local, regional, or national adverse impact on the environment, because the Proposed Action Alternative would:

1. Improve structural stability of the American Canal, ensuring an uninterrupted flow of allotted water from the Rio Grande to El Paso County farms and to existing and planned El Paso Water Utilities water treatment facilities.

2. Minimize seepage loss through the cracks in the canal lining;

3. Provide the full design capacity (1535 cfs) influent into the RGACE;

4. Improve safety and reduce the risk of accidental drownings in the American Canal by installing fences and safety equipment;

5. Preserve the historical open channel character of the Canal, and

6. Preserve historical and photographic documentation of the

historic Smelter Bridge per HAER Level III Standard.

Based on the Draft Environmental Assessment and the implementation of the proposed historical mitigation, it has been determined that the proposed action will not have a significant adverse effect on the environment, and an environmental impact statement is not warranted.

Dated: October 26, 2000.

William A. Wilcox, Jr.,

Attorney-Advisor (General).

[FR Doc. 00–30079 Filed 11–28–00; 8:45 am]

BILLING CODE 7010–01–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION

United States and Mexico

Notice of Availability of Final Environmental Impact Statement for the El Paso-Las Cruces Regional Sustainable Water Project Sierra and Dona Ana Counties, New Mexico and El Paso County, Texas

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of availability of final environmental impact statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, the United States Section, International Boundary and Water Commission (USIBWC) in conjunction with the El Paso Water Utilities/Public Service Board has prepared a final environmental impact statement (FEIS) on the El Paso-Las Cruces Regional Sustainable Water Project in Sierra and Dona Ana counties, New Mexico and El Paso County, Texas as proposed by the New Mexico-Texas Water Commission. The FEIS analyzes the no action alternative and the impacts of five action alternatives from construction and operation of the project. No final decision can be made on this proposal during the 30 days following the filing of this FEIS, in accordance with the Council on Environmental Quality regulations, 40 CFR 1506.10(b)(2).

ADDRESSES: The FEIS may be inspected by appointment during normal business hours at: El Paso Water Utilities, 1154 Hawkins Boulevard, El Paso, Texas; and United States Section, International Boundary and Water Commission, 4171 North Mesa Street, Suite C–315, El Paso, Texas. Public libraries that have the FEIS available for review are: Branigan Memorial Library, 200 East Picacho Avenue, Las Cruces, New Mexico; El Paso Public Library, 501 North Oregon Street, El Paso, Texas; New Mexico State University Library, Las Cruces, New Mexico; and University Library, The University of Texas at El Paso, El Paso, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Echlin, Environmental Protection Specialist, Environmental Management Division, USIBWC, 4171 North Mesa Street, C–310, El Paso, Texas 79902 or call 915/832–4741. E-mail: dougechlin@ibwc.state.gov.

SUPPLEMENTARY INFORMATION: The New Mexico-Texas Water Commission, established in 1991 to help meet the water resource challenges of the region, proposed the El Paso-Las Cruces Regional Sustainable Water Project to secure future drinking water supplies from surface sources for the El Paso-Las Cruces region. The project includes the acquisition, conveyance, treatment, and distribution of a drinking water supply, and upgrading or constructing facilities for water conveyance, treatment, distribution, and aquifer storage and recovery. These activities comprise the following three project purposes to provide a year-round drinking water supply from the Rio Grande Project that is of sufficient quantity and quality to meet the anticipated municipal needs of Hatch, Las Cruces, northern and southern Dona Ana County, New Mexico and El Paso, Texas; to protect and maintain the sustainability of the Mesilla Bolson (ground water basin or aquifer); and to extend the longevity of the Hueco Bolson.

Project alternatives presented in this FEIS were designed to achieve these three project purposes. In addition, the project will strive to provide high quality water needed to achieve successful treatment and to meet federal drinking water standards; to deliver water efficiently and promote water conservation; and provide overall benefits to the riverine ecosystem, particularly aquatic and riparian habitats.

The project recognizes and accepts existing institutional and social constraints, including continuing to meet treaty, compact, and contract requirements for delivery of Rio Grande Project waters. The project would not adversely affect the quantity and quality of water deliveries to agricultural users; impose new responsibilities on state or federal governments; or preclude other opportunities to enhance the Rio Grande ecosystem. The need for this project is based on the region's future drinking water supply requirements. The project is necessary to avoid both potentially permanent impacts on the Mesilla and Hueco Bolsons and critical drinking water shortages in the El Paso-Las Cruces region. Population growth rates have increased sharply, increasing the demand for drinking water. It is projected that the Texas portion of the Hueco Bolson will be exhausted of all fresh water by the year 2025 because water is being pumped from the aquifer faster than it can be naturally replenished. If additional surface waters are not made available to supplement the drinking water supply, water shortages in the region will likely lead to severe health and sanitation problems.

Copies of the FEIS have been sent to agencies, organizations and individuals who participated in the scoping process and to those who have requested copies of the FEIS. A limited number of the FEIS may be obtained upon request from the contact person identified above. A Record of Decision will be prepared on this proposal after a minimum of 30 days following the filing of the FEIS. Any comments on the Final EIS must be received no later than 30 days after the date of publication of the notice of availability by the Environmental Protection Agency (EPA) in the **Federal Register**. No action will be taken on the proposed action before 30 days following publication of the notice of availability of the EIS by EPA.

Dated: November 17, 2000.

William A. Wilcox, Jr.,

Legal Advisor.

[FR Doc. 00–30224 Filed 11–28–00; 8:45 am]

BILLING CODE 4710–03–U

NUCLEAR REGULATORY COMMISSION

Reactor Oversight Process Initial Implementation Evaluation Panel; Meeting Notice

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 94–463, Stat. 770–776) the U.S. Nuclear Regulatory Commission (NRC), on October 2, 2000, announced the establishment of the Reactor Oversight Process Initial Implementation Evaluation Panel (IIEP). The IIEP functions as a cross-disciplinary oversight group to independently monitor and evaluate the results of the first year of implementation of the Reactor Oversight Process (ROP). A Charter governing the IIEP functions as a Federal Advisory Committee was filed with Congress on October 17, 2000, after consultation with the Committee Management Secretariat, General Services Administration. The IIEP will

hold its second meeting on December 11–12, 2000, at the U.S. Nuclear Regulatory Commission's Region II Office in Atlanta, Georgia. The Region II Office is located in the Sam Nunn Atlanta Federal Center, 24T20, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8931.

The IIEP meeting participants are listed below along with their affiliation:

A. Randolph Blough—U.S. Nuclear Regulatory Commission
R. William Borchardt—U.S. Nuclear Regulatory Commission
Kenneth Brockman—U.S. Nuclear Regulatory Commission
Steve Floyd—Nuclear Energy Institute
David Garchow—PSEG Nuclear LLC
Richard Hill—Southern Nuclear Operating Company
Rod Krich—Commonwealth Edison Company
Robert Laurie—California Energy Commission
James Moorman, III—U.S. Nuclear Regulatory Commission
Loren Plisco—U.S. Nuclear Regulatory Commission
Steven Reynolds—U.S. Nuclear Regulatory Commission
A. Edward Scherer—Southern California Edison Company
James Setser—Georgia Department of Natural Resources
James Trapp—U.S. Nuclear Regulatory Commission

A tentative agenda of the meeting is outlined as follows:

December 11, 2000 Meeting

8:00 am—Introduction/Meeting Objectives and Goals.
8:15 am—Review of Meeting Minutes and Action Items from November 1–2, 2000 Meeting.
8:30 am—Presentation of Results from Regional Workshops.
—Summary of meetings from staff.
—Summary of meeting issues from IIEP members.
—Summary of issues from site public meetings from IIEP members.
10:00 am—Presentation of Summary of ROP Issues Collected from IIEP Members.
12:00 pm—Lunch.
1:00 pm—Panel Discussion of Issues and Prioritization.
3:00 pm—Work Planning and Report Outline Development.
5:00 pm—Adjourn.

December 12, 2000 Meeting

8:00 am—Recap of Previous Day's Meeting/Meeting Objectives and Goals.
8:30 am—Presentation of Stakeholder Issues/Views.
12:00 pm—Lunch.
1:00 pm—Panel Discussion of Stakeholder Issues/Views.
3:00 pm—Agenda Planning for January Meeting.
—Schedule March Meeting dates.
4:00 pm—Public Comments/General Discussion.
5:00 pm—Adjourn.

Meetings of the IIEP are open to the members of the public. Oral or written views may be presented by the members of the public, including members of the nuclear industry. Persons desiring to make oral statements should notify Mr. Loren R. Plisco (Telephone 404/562–4501, e-mail LRP@nrc.gov) or Mr. John D. Monninger (Telephone 301/415–3495, e-mail JDM@nrc.gov) five days prior to the meeting date, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras will be permitted during this meeting.

Further information regarding topics of discussion; whether the meeting has been canceled, rescheduled, or relocated; and the Panel Chairman's ruling regarding requests to present oral statements and time allotted, may be obtained by contacting Mr. Loren R. Plisco or Mr. John D. Monninger between 8:00 a.m. and 4:30 p.m. EST.

IIEP meeting transcripts and meeting reports will be available from the Commission's Public Document Room. Transcripts will be placed on the agency's web page.

Dated: November 22, 2000.

Andrew Bates,

Advisory Committee Management Officer.

[FR Doc. 00–30432 Filed 11–28–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

Tennessee Valley Authority; Watts Bar Nuclear Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to the Facility Operating License (FOL) issued to Tennessee Valley Authority (TVA, licensee) for operation of the Watts Bar Nuclear Plant, Unit 1 (WBN). The facility is located at the licensee's site on the west branch of the Tennessee River approximately 50 miles northeast of Chattanooga, Tennessee.

Environmental Assessment

Identification of Proposed Action

The proposed license amendment would allow the licensee to increase the licensed thermal power level of WBN, Unit 1, from 3411 to 3459 megawatts thermal (MWt), which represents a 1.4 percent increase in the allowable thermal power. This facility was authorized for power production at 3411 MWt with issuance of the FOL on February 7, 1996.

The proposed action is in accordance with the licensee's application for license amendment dated June 7, as supplemented by letters dated June 23, August 24, September 26, October 6, October 27 and November 16, 2000.

The Need for the Proposed Action

The proposed action will allow an increase in power generation at WBN to provide additional electrical power for distribution to the grid. Power uprate has been widely recognized by the industry as a safe and cost-effective method to increase generating capacity.

Environmental Impacts of the Proposed Action

The Commission has previously evaluated the environmental impact of operation of WBN, as described in the ''Final Environmental Statement Related to the Operation of Watts Bar Nuclear Plant, Units 1 and 2,'' NUREG–0498, December 1978 and its Supplement 1, April 1995. With regard to consequences of postulated accidents, the licensee has reanalyzed the design-basis accident doses for the exclusion area boundary, low population zone, and the control room dose to the operators and determined that there will be a small increase in these doses; however, the analysis presented in NUREG–0498 postulates these doses resulting from releases at 104.5 percent of the currently licensed power level. Thus, the increase in postulated doses due to design-basis accidents is bounded by the previous evaluation presented in NUREG–0498. No increase in the probability of these accidents is expected to occur.

With regard to normal releases, calculations have been performed that show the potential impact on the radiological effluents from the proposed 1.4 percent increase in power level of WBN. For the 1.4 percent uprating calculation, the offsite doses from normal effluent releases remain significantly below the bounding limits of Title 10 of the *Code of Federal Regulation* (10 CFR), Part 50, Appendix I. Normal annual average gaseous releases remain limited to a small fraction of 10 CFR Part 20 limits for identified mixtures. Solid and liquid waste processing systems are expected to operate within their design requirements. More frequent operation of these systems may lead to a slight increase in solid and liquid waste production.

The Commission has completed its evaluation of the proposed action and concludes that the proposed action will

not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. With regard to thermal discharges to the Chickamauga Reservoir on the Tennessee River, a small increase in the upstream to downstream temperature rise allowed by the National Pollution Discharge Elimination System (NPDES) permit for the Tennessee River is expected, due to the proposed 1.4 percent power uprate. The increase is expected to be approximately 0.1 degrees Fahrenheit, and therefore, insignificant. Existing administrative controls ensure the conduct of adequate monitoring such that appropriate actions can be taken to preclude exceeding NPDES permitted limits. No additional monitoring requirements or other changes relative to the NPDES permit are required as a result of the power uprate.

Therefore, as described in the preceding discussions, the 1.4 percent uprate of WBN does not have a significant environmental impact on the Chickamauga Reservoir.

No other nonradiological impacts are associated with the proposed action.

Based upon the above, the Commission concludes that the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the FES for Watts Bar.

Agencies and Persons Contacted

In accordance with its stated policy, on November 20, 2000, the staff consulted with the Tennessee State Official, Mr. J. Graves, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that this action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for this action.

For further details with respect to this action, see the licensee's application for license amendment dated June 7, 2000, as supplemented June 23, August 24, September 26, October 6, October 27 and November 16, 2000. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland this 21st day of November 2000.

For the Nuclear Regulatory Commission.

Kahtan N. Jabbour,

Acting Chief, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–30433 Filed 11–28–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of November 27, December 4, 11, 18, 25, 2000, and January 1, 2001.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 27

Monday, November 27, 2000

8:55 a.m. Affirmation Session (Public Meeting) (tentative)
- a: Power Authority of the State of New York Entergy Companies, Transfer of licenses for Indian Point 3 and FitzPatrick nuclear plants, Petitions to Intervene
- b: Florida Power & Light Co., License Renewal Application for Turkey Point Units 3 and 4; Licensing Board Referral and Scheduling Order

9:00 a.m. Briefing by DOE on Plutonium Disposition Program and MOX Fuel Fabrication Facility Licensing (Public Meeting) (Contact: Drew Persinko, 301–415–6522)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Week of December 4—Tentative

Monday, December 4, 2000

1:55 p.m. Affirmation Session (Public Meeting) (If needed)

2:00 p.m. Briefing on License Renewal Generic Aging Lessons Learned (GALL) Report, Standard Review Plan (SRP), and Regulatory Guide (Public Meeting) (Contact: Chris Grimes, 301–415–1183

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Week of December 11—Tentative

There are no meetings scheduled for the Week of December 11.

Week of December 18—Tentative

Wednesday, December 20, 2000

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

9:30 a.m. Briefing on the Status of the Fuel Cycle Facility Oversight Program Revision (Public Meeting) (Contact: Walt Schwink, 301–415–7253)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Week of December 25—Tentative

There are no meetings scheduled for the Week of December 25.

Week of January 1, 2001

There are no meetings scheduled for the Week of January 1, 2001.

*THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:
http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no

longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@hrc.gov or dkw@nrc.gov.

Dated: November 24, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–30465 Filed 11–27–00; 10:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 6, 2000, through November 16, 2000. The last biweekly notice was published on November 15, 2000.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By December 29, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first Floor), Rockville, Maryland 20852. Publicly available records will be accessible and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the

bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: October 6, 2000 (U–603329).

Description of amendment request: The proposed amendment would relocate Technical Specification Figure 3.6.4.1–1, ''Secondary Containment Drawdown Time for 1500 cfm Boundary Leakage'' to plant procedures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed Technical specification (TS) change eliminates an inconsistency between the Secondary Containment surveillance requirement (SR 3.6.4.1.4) and the associated Bases. The proposed change (1) revises the wording of SR 3.6.4.1.4 to verify the time to draw down the secondary containment to ≥0.25 inch water gauge for each standby gas treatment (SGT) subsystem is within the required time; and (2) relocates the specific acceptance criteria (existing TS Figure 3.6.4.1–1) to plant procedures and the TS Bases.

The scope of the proposed change is thus limited to the affected SR. No changes to plant equipment or the plant design are involved. The affected SR, as are surveillances in general, is not an initiator to any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased.

The proposed change impacts SR 3.6.4.1.4 but does not change its intent or the associated acceptance criteria. Thus, the components and structural integrity being tested will still be required to be maintained Operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification (TS) change eliminates an inconsistency between the Secondary Containment surveillance requirement (SR 3.6.4.1.4) and the associated Bases. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. No new failure modes are thus introduced by the proposed change. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change will not involve a significant reduction in the margin of safety.

The proposed Technical Specification (TS) change eliminates an inconsistency between the Secondary Containment Integrity surveillance requirement (SR 3.6.4.1.4) and the associated Bases. The revised wording of the Surveillance Requirement and the relocation of the acceptance criteria to plant procedures and TS Bases have been evaluated to ensure that they are sufficient to verify that the equipment used to meet the LCO can perform its required functions. The relocation of the acceptance criteria is consistent with the Bases previously approved in Amendment 21. Thus, appropriate equipment continues to be tested in a manner that gives confidence that the equipment can perform its assumed safety function. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW, Washington, DC 20036–5869

NRC Section Chief: Anthony J. Mendiola.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: October 6, 2000 (U–603332).

Description of amendment request: The proposed amendment would remove from the Technical Specification surveillance requirements the minimum operating time specified

for the containment/hydrogen mixing system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed Technical Specification (TS) change deletes the minimum run time requirement (of 15 minutes) for the Containment/Drywell Hydrogen Mixing System as denoted in Surveillance Requirement 3.6.3.3.1. Satisfying a TS Surveillance Requirement ensures that the associated system will function to mitigate the consequences of an accident, and, as such is not an initiator of an accident or malfunction. Therefore, since such a test requirement or operation is not an initiator to any accident previously evaluated, the probability of an accident previously evaluated is not significantly increased.

In addition, the equipment being tested is still required to be operable and capable of performing its accident mitigation function assumed in the accident analysis. Eliminating the time requirement from the Surveillance Requirement does not reduce or relax the requirements to ensure that all controls are functioning properly. Also, it does not reduce or relax the requirements for ensuring the degraded conditions such as piping blockage, compressor failure or excessive vibration can be detected for corrective action. As a result, the consequences of any accident previously evaluated are not significantly affected. Therefore, this change does not involve a significant increase in the consequences of an accident previously evaluated.

(2) The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change, as denoted in Surveillance Requirement 3.6.3.3.1, does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. No new potential accident initiators are therefore introduced by the proposed change. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change will not involve a significant reduction in the margin of safety.

The proposed TS change to delete the minimum run time requirement in Surveillance Requirement 3.6.3.3.1 does not result in a significant reduction in the margin of safety. As provided in the justification for the proposed change, the 15-minute run time acceptance criterion is not necessary to ensure that the Containment/Drywell Hydrogen Mixing can perform its required function. Thus, if a margin of safety can be ascribed to proper operation of this system for LOCA mitigation, the system will continue to be tested in a manner that gives confidence that it can perform its assumed safety function. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW, Washington, DC 20036–5869.

NRC Section Chief: Anthony J. Mendiola.

AmerGen Energy Company, LLC, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: August 29, 2000.

Description of amendment request: The proposed amendment would revise the Technical Specifications in the ''Administrative Controls'' section to certain position titles and the Shift Technical Advisor (STA) staffing requirement to allow one of the required on-shift Senior Reactor Operator (SRO) positions to be combined with the required STA position so as to serve in a dual role SRO/STA position.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would operation of the facility in accordance with the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The [proposed] changes do not affect the purpose, function, performance, operability, inspection or testing of and does not make any physical or procedural changes to plant systems, structures or components. Also, all existing technical specification limiting conditions for operation and surveillance requirements are retained.

TSCR [Technical Specifications Change Request] makes administrative changes to certain position titles without changing the technical requirements for position responsibilities.

TSCR also changes the Shift Technical Advisor (STA) staffing requirement to allow one of the required on-shift Senior Reactor Operator (SRO) positions to be combined with the required STA position so as to serve in a dual-role SRO/STA position as encouraged by the NRC in Option 1 of Generic Letter 86–04, ''Policy Statement on Engineering Expertise On Shift'', dated February 13, 1986.

Implementation of the proposed dual-role SRO/STA change will result in personnel with enchanced operational knowledge being assigned to perform the STA function of providing accident assessment expertise, and analyzing and responding to off normal occurrences when needed. The NRC's stated preference in the October 28, 1985, ''Policy Statement on Engineering Expertise on Shift'', indicates that the NRC has concluded that the individual filling the dual-role SRO/STA position may perform these functions better than a non-licensed individual filling the STA position even when the SRO/STA is concurrently functioning as one of the required shift SROs.

Therefore, since no physical or procedural changes are being made to existing plant systems, structures or components and since the position title changes are administrative in nature and the function and responsibilities of the STA will be executed by an appropriately qualified individual filling the dual-role SRO/STA position, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would operation of the facility in accordance with the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The [proposed] changes do not affect the purpose, function, performance, operability, inspection or testing of and does not make any physical or procedural changes to plant systems, structures or components. Also, all existing technical specification limiting conditions for operation and surveillance requirements are retained.

TSCR 277 makes administrative changes to certain position titles without changing the technical requirements for the position responsibilities.

TSCR 277 also changes the Shift Technical Advisor (STA) staffing requirement to allow one of the required on-shift Senior Reactor Operator (SRO) positions to be combined with the required STA position so as to serve in a dual-role SRO/STA position as encouraged by the NRC in Option 1 of Generic Letter 86–04, ''Policy Statement on Engineering Expertise On Shift'', dated February 13, 1986.

Therefore, since no physical or procedural changes are being made to existing plant systems, structures or components and since the position title changes are administrative in nature and the function and responsibilities of the STA will be executed by an appropriately qualified individual filling the dual-role SRO/STA position, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Would operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

The [proposed] changes do not affect the purpose, function, performance, operability, inspection or testing of and does not make

any physical or procedural changes to plant systems, structures or components. Also, all existing technical specification limiting conditions for operation and surveillance requirements are retained.

TSCR 277 makes administrative changes to certain position titles without changing the technical requirements for the position responsibilities.

TSCR 277 also changes the Shift Technical Advisor (STA) staffing requirement to allow one of the required on-shift Senior Reactor Operator (SRO) positions to be combined with the required STA position so as to serve in a dual-role SRO/STA position as encouraged by the NRC in Option 1 of Generic Letter 86–04, ''Policy Statement on Engineering Expertise On Shift'', dated February 13, 1986.

Therefore, since no physical or procedural changes are being made to existing plant systems, structures or components and since the position title changes are administrative in nature and the function and responsibilities of the STA will be executed by an appropriately qualified individual filling the dual-role SRO/STA position and shift staffing required by TS 6.2.2.2 and 10 CFR 50.54(m)(2) will [continue] to be maintained, operation of the facility in accordance with the proposed amendment will not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kevin P. Gallen, Jr., Esquire, Morgan, Lewis, & Bockius LLP, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: M. Gamberoni.

Consolidated Edison Company of New York, Inc., Docket No. 50–003, Indian Point Nuclear Generating Station, Unit 1, Buchanan, New York

Date of amendment request: October 5, 2000.

Brief description of amendment: The proposed changes would revise Technical Specifications (TSs) Sections 3.2.1.a, 3.2.1.e, and 3.2.1.f to relocate administrative controls to the Quality Assurance Program Description (QAPD).

Basis for proposed no significant hazards considerations determination: As required by 10 CFR 50.91(a), the licensee has provide its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or in the consequences of an accident previously evaluated?

No. The proposed changes are administrative in nature. The changes involve Section 3.2.1.a, referencing the QAPD instead of the IP#2 [Indian Point Nuclear Generating Station, Unit 2] UFSAR [Updated Final Safety Analysis Report], deleting Section 3.2.1.e and having Section 3.2.1.f, refer to the QAPD for the administrative controls. These changes do not affect possible initiating events for accidents previously evaluated or alter the configuration or operation of the facility. The Limiting Safety System Settings and Safety Limits specified in the current Technical Specifications remain unchanged. Therefore, the proposed changes would not involve a significant increase in the probability or in the consequences of an accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes are administrative in nature. The safety analysis of the facility remains complete and accurate. There are no physical changes to the facility and the plant conditions for which the design basis accidents have been evaluated are still valid. The operating procedures and emergency procedures are unaffected. Consequently no new failure modes are introduced as a result of the proposed changes. Therefore, the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed changes are administrative in nature. Since there are no changes to the operation of the facility or the physical design, the IP#1 [Indian Point Nuclear Generating Station, Unit 1] FSAR [Final Safety Analysis Report] or the IP#2 UFSAR design basis, accident assumptions, or IP#1 Technical Specification Bases are not affected. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards considerations.

Attorney for Licensee: Brent L. Brandenberg, Esq., Assistant General Counsel, Consolidated Edison Company of New York, Inc., 4 Irving Place-1830, New York, NY 10003.

NRC Section Chief: Michael T. Masnik.

Energy Northwest, Docket No. 50–397, WNP–2, Benton County, Washington

Date of amendment request: October 12, 2000.

Description of amendment request: The amendment changes the facility name of WNP–2 to Columbia Generating Station in all the applicable portions of the Operating License including Appendix A (Technical Specifications) and Appendix B (Environmental Protection Plan). In addition, the proposed change makes editorial changes to Technical Specification Figure 4.1–1, Site Area Boundary.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

No. This request involves an administrative change only. The Operating License (OL) and Technical Specification Figure 4.1–1, Site Area Boundary, are being changed to reflect the new name of the facility. In addition, editorial changes are being made to Figure 4.1–1 for clarification. No actual plant equipment or accident analyses are affected by the proposed change. Therefore, this request will have no impact on the probability or consequence of any type of accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No. This request involves an administrative change only. The OL and Technical Specification Figure 4.1–1 are being changed to reflect the new name of the facility. In addition, editorial changes are being made to Figure 4.1–1 for clarification. No actual plant equipment or accident analyses are affected by the proposed change and no failure modes not bounded by previously evaluated accidents will be created. Therefore, this request will have no impact on the possibility of any type of accident: new, different, or previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

No. Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.,* fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public. This request involves an administrative change only. The OL and Technical Specification Figure 4.1–1 are being changed to reflect the new name of the facility. In addition, editorial changes are being made to Figure 4.1–1 for clarification.

No actual plant equipment or accident analyses are affected by the proposed change. Additionally, the proposed change will not relax any criteria used to establish safety limits, will not relax any safety system settings, or will not relax the bases for any limiting conditions of operation. Therefore, this proposed change will not impact margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Energy Northwest, Docket No. 50–397, WNP–2, Benton County, Washington

Date of amendment request: October 30, 2000.

Description of amendment request: Surveillance Requirement (SR) 3.6.1.3.8 currently requires verification of the actuation capability of each excess flow check valve (EFCV) every 24 months. The proposed change is to relax the SR frequency by allowing a ''representative sample'' of reactor instrument line EFCVs to be tested every 24 months, such that each reactor instrument line EFCV will be tested at least once every 10 years (nominal). The proposed change will also result in limiting the SR to only the reactor instrument line EFCVs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

The current SR frequency requires each reactor instrument line EFCV to be tested every 24-months. The reactor instrument line EFCVs at WNP–2 are designed so that they will not close accidentally during normal operation, but will close if a rupture of the instrument line is indicated downstream of the valve, and have their status indicated in the control room. This proposed change allows a reduced number of reactor instrument line EFCVs to be tested every 24-months. There are no physical plant modifications associated with this change. Industry operating experience demonstrates a high reliability of these valves. Neither reactor instrument line EFCVs nor their failures are capable of initiating previously evaluated accidents; therefore, there can be no increase in the probability of occurrence of an accident regarding this proposed change.

Reactor instrument lines connecting to the reactor coolant pressure boundary are equipped with EFCVs and also have a flow-restricting orifice inside containment and upstream of the EFCV. The consequences of an unisolable rupture of such an instrument line has been previously evaluated in WNP–2 FSAR [Final Safety Analysis Report] 15.6.2. The instrument lines that penetrate primary containment conform to Regulatory Guide 1.11 (WNP–2 FSAR 7.1.2.4). Those instrument lines are Seismic Category I and terminate in instruments that are Seismic Category I (reference WNP–2 FSAR Table 6.2–16 note 27).

The sequence of events in WNP–2 FSAR Section 15.6.2.2 for a reactor instrument line break assumes a continuous discharge of reactor water through the instrument line until the reactor vessel is cooled and depressurized (5 hours). Although not expected to occur as a result of this change, the postulated failure of an EFCV to isolate as a result of reduced testing is bounded by this previous evaluation. Therefore, there is no increase in the previously evaluated consequences of the rupture of an instrument line and there is no potential increase in the consequences of an accident previously evaluated as a result of this change.

The containment atmosphere and suppression pool instrument line EFCVs are required to remain open to sense containment atmosphere and suppression pool level conditions during postulated accidents. They are not required to close during an instrument line break assumed during normal plant operation nor is their design capable of closing during normal plant conditions. These EFCVs do not meet the criteria for inclusion in 10 CFR 50.36(c)(3) as they have no active safety function and thus relocation of their testing requirements to the FSAR cannot effect the probability of an increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change allows a reduced number of reactor instrument line EFCVs to be tested each operating cycle and that the testing requirements for containment atmosphere and suppression pool instrument line EFCVs be relocated to the FSAR. No other changes in requirements are being proposed. Industry operating experience demonstrates the high reliability of these valves. The potential failure of a reactor instrument line EFCV to isolate by the proposed change in testing is bounded by the previous evaluation of an instrument line rupture. This change will not physically alter the plant (no new or different type of equipment will be installed). This change will not alter the operation of process variables, structures, or components as described in the safety analysis. Thus, a new or different kind of accident will not be created.

3. The proposed change does not involve a significant reduction in a margin of safety.

The consequences of an unisolable rupture of an instrument line has been evaluated in WNP–2 FSAR Section 15.6.2 in accordance with the requirements of Regulatory Guide 1.11. That evaluation assumed a continuous discharge of reactor water for the duration of the detection and cooldown sequence (5 hours). The only margin of safety applicable to this proposed change is considered to be that implied by this evaluation. Since a continuous discharge was assumed in this evaluation, any potential failure of a reactor instrument line EFCV to isolate as a result of reduced testing frequency is bounded by existing analysis and does not involve a significant reduction in the margin of safety.

There is no accident for which the containment atmosphere or suppression pool instrument line EFCVs are designed to actuate to the isolation position for mitigation. A postulated break of a containment atmosphere or suppression pool instrument line under normal operating conditions would not result in a condition that would create the ability for these EFCVs to operate because neither the containment pressure nor the suppression pool level head would be sufficient to result in their actuation. As these EFCVs have no active design or safety function, the relocation of testing requirements would not involve a significant reduction in the margin of safety. A postulated break of any instrument line simultaneously with a loss of coolant accident is beyond the design basis for the plant.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

GPU Nuclear Corporation and Saxton Nuclear Experimental Corporation (SNEC), Docket No. 50–146, Saxton Nuclear Experimental Facility (SNEF), Bedford County, Pennsylvania

Date of amendment request: February 2, 2000, as supplemented on August 11 and September 18, 2000.

Description of amendment request: The proposed amendment would approve the license termination plan for the SNEF.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change is necessary to achieve the decommissioning objective of terminating the license and releasing the site for unrestricted use. As such, the proposed change:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated since accidents which might occur during the active decommissioning phase of the SNEC facility are bounded by the twelve accidents addressed in section 3.0 of the Updated Safety Analysis Report (USAR). The accident analysis addressed in the USAR demonstrate that no adverse public health and safety impacts are expected from accidents that

might occur during decommissioning operations at the SNEC facility. The greater part of radioactively contaminated materials and components originally located in the SNEC facility Containment Vessel are no longer on site, having been shipped as radioactive waste.

Implementation of the SNEC License Termination Plan involves a continuation of the decommissioning process including the final status survey activity to be performed prior to site closeout at the end of the dismantlement phase. These activities do not involve a significant increase in either the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated. Accidents previously evaluated in the USAR access different methods of dispersing radioactive material to the environment, which include a loss of support systems and external events. Remaining dismantlement activities and final status survey work described in the License Termination Plan are similar to those previously performed and will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will not involve a significant reduction in a margin of safety. The Technical Specifications currently in place at the SNEC facility were developed to safely decommission the SNEC facility. Issuance of the proposed amendment would not reduce the controls established by the technical specifications for activities performed at the SNEC facility. The proposed License Amendment establishes additional controls to ensure License Termination Plan activities are performed effectively. Thus, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis of the licensees and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for the Licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Branch Chief: Ledyard B. Marsh.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: June 1, 2000.

Description of amendment request: The licensee is proposing to relocate Technical Specifications 3.3.3.2, ''Instrumentation, Movable Incore Detectors''; 3.3.3.3, ''Instrumentation, Seismic Instrumentation''; 3.3.3.4, ''Instrumentation, Meteorological Instrumentation''; 3.3.3.8, ''Loose-Part Detection System''; and 3.3.4, ''Turbine Overspeed Protection'' and Index Pages vi and vii to the Technical Requirements Manual (TRM). The Bases of the affected Technical Specifications will be modified to address the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to relocate the movable incore detector instrumentation, seismic monitoring instrumentation, meteorological monitoring instrumentation, loose-part detection instrumentation, and turbine overspeed protection instrumentation from the Technical Specifications to the TRM will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the [design-basis accidents] DBAs will not change. In addition, the movable incore detector instrumentation, seismic monitoring instrumentation, meteorological monitoring instrumentation, and loose-part detection instrumentation are not accident initiators and cannot cause an accident. For the turbine overspeed protection instrumentation, the DBAs and transients include a variety of system failures and conditions which might result from turbine overspeed events and potential missiles striking various plant systems and equipment. However, in view of the low likelihood of the generation of turbine missiles, the turbine overspeed protection instrumentation does not serve a primary protective function. Therefore, these changes will not significantly increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to relocate the movable incore detector instrumentation, seismic monitoring instrumentation, meteorological monitoring instrumentation, loose-part detection instrumentation, and turbine overspeed protection instrumentation do not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any [structure, system, or component] SSC functions and do not alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed Technical Specification and Bases changes will relocate the requirements for the movable incore detector instrumentation, seismic monitoring instrumentation, meteorological monitoring instrumentation, loose-part detection instrumentation, and turbine overspeed protection instrumentation from Technical Specifications to the TRM. Any future changes to the relocated requirements will be in accordance with 10 CFR 50.59 and approved station procedures. The proposed changes will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the DBAs will not change. In addition, the relocated requirements do not meet any of the 10 CFR 50.36c(2)(ii) criteria on items for which Technical Specifications must be established. Therefore, there will be no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: June 29, 2000 as supplemented on October 16, 2000.

Description of amendment request: The proposed changes would modify Technical Specification (TS) Sections 3.3.2, ''Instrumentation—Engineered Safety Features Actuation System Instrumentation;'' 3.7.7, ''Plant Systems—Control Room Emergency Ventilation System;'' 3.7.8, ''Plant Systems—Control Room Envelope Pressurization System;'' 3.7.9, ''Plant Systems—Auxiliary Building Filter System;'' 3.9.1.1, ''Refueling Operations—Boron Concentration,'' 3.9.1.2; ''Refueling Operations—Boron Concentration;'' 3.9.2, ''Refueling Operations—Instrumentation;'' 3.9.4, ''Refueling Operations—Containment Building Penetrations;'' 3.9.9, ''Refueling Operations—Containment Purge and Exhaust Isolation System;'' 3.9.10, ''Refueling Operations—Water Level—Reactor Vessel;'' and 3.9.12, ''Refueling Operations—Fuel Building Exhaust Filter System.'' Some of these proposed changes are associated with the revised fuel handling accident analysis, and integrity of the Control Room and the Fuel Building boundaries. Several administrative changes are also proposed to reflect Millstone Unit 3 terminology, removal of unnecessary information and to eliminate confusion

by providing consistency between limiting conditions for operation, action requirements, and Surveillance Requirements. The proposed Technical Specifications changes associated with the revised containment fuel handling accident analysis results in an increase in the consequences of a containment fuel handling accident since the current analysis of a containment fuel handling accident does not assume the release of any radioactive material from containment. The revised analysis assumes a release of radioactive material because it assumes both personnel access hatch doors are open and at least one hatch door is closed within 10 minutes of a fuel handling accident inside containment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification Changes Associated with Analyses Changes

The proposed Technical Specification changes associated with the revised fuel handling accident analyses will not cause an accident to occur and will not result in any change in the operation of the associated accident mitigation equipment. The design basis accidents remain the same postulated events described in the Millstone Unit No. 3 FSAR. Therefore, the proposed changes will not increase the probability of an accident previously evaluated.

The proposed Technical Specification changes associated with the revised fuel handling accidents analyses will increase the associated consequences. The increased consequences are the result of a revised plant configuration and revised calculation assumptions, not the result of the addition of any new plant equipment. The current Fuel Handling Accident Inside Containment (FHAIC) analysis assumes the containment is isolated, or will be isolated, prior to any release. The revised FHAIC analysis will allow both containment personnel access hatch doors to remain open, under administrative control, during core alterations and irradiated fuel movement inside containment. This may result in a radioactive release if a fuel handling accident were to occur. The revised FHAIC analysis demonstrates that the magnitude of the potential release is small and bounded by the consequences of the Design Basis Loss of Coolant Accident. The increase in the consequences of the revised Fuel Handling Accident Inside the Spent Fuel Pool (FHAISFP) analysis due to the revised calculation assumptions is small. Therefore, the proposed changes will not result in a significant increase in the consequences of an accident previously evaluated.

Other Technical Specification Changes

The proposed Technical Specification changes not associated with the revised fuel handling accidents analyses affect the limiting conditions for operation (LCOs), applicability, action requirements, and surveillance requirements of numerous specifications associated with plant operating restrictions, accident mitigation functions, and accident mitigation equipment. The affected operating restrictions, accident mitigation functions, and accident mitigation equipment are not accident initiators. The proposed changes will not cause an accident to occur and will not result in any change in the operation of the associated accident mitigation equipment. The design basis accidents remain the same postulated events described in the Millstone Unit No. 3 FSAR. Therefore, the proposed changes will not increase the probability of an accident previously evaluated.

The proposed LCO and applicability changes are consistent with the design basis accident analyses, including the revised fuel handling accident analyses. (The proposed change to the LCO for containment penetrations, which will allow both personnel access hatch doors to remain open during core alterations and irradiated fuel movement inside containment will result in an increase in the consequences of a FHAIC as previously discussed.) This will ensure that the accident mitigation functions and associated equipment are available for accident mitigation as assumed in the associated analyses. As a result, the accident analysis assumptions and mitigation methods will not be adversely affected by these changes. Therefore, the proposed changes will not result in a significant increase in the consequences of an accident previously evaluated.

The additional proposed changes to the Technical Specifications that will standardize terminology, relocate information to the Bases, remove extraneous information, and make minor format changes will not result in any technical changes to the current requirements. Therefore, these additional proposed changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Technical Specifications do not impact any system or component that could cause an accident. The proposed changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any unusual operator actions. The proposed changes will not alter the way any structure, system, or component functions, and will not significantly alter the manner in which the plant is operated. There will be no adverse effect on plant operation or accident mitigation equipment. The response of the plant and the operators following an accident will not be significantly different. In addition, the proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. Involve a significant reduction in a margin of safety.

Title 10 of the Code of Federal Regulations Part 100 establishes the accident exposure limits (300 rem thyroid and 25 rem whole body) for the Exclusion Area Boundary and Low Population Zone. The radiological consequences resulting from the Technical Specification changes associated with the revised fuel handling accident analyses are well within these limits. The radiological consequences to the Control Room Operators resulting from the Technical Specification changes associated with the revised fuel handling accident analyses are also within the GDC 19 limit. Since these limits will not be exceeded and these limits establish the margin of safety in the plant's current licensing basis, the proposed changes will not result in a significant reduction in a margin of safety.

The proposed Technical Specification LCO, applicability, action requirement, and surveillance requirement changes not associated with the revised fuel handling accidents analyses do not adversely affect equipment design or operation. In addition, the proposed allowed outage times and shutdown times are consistent with times already contained in the Millstone Unit No. 3 Technical Specifications. Therefore, these changes will not result in a significant reduction in a margin of safety.

The additional proposed changes to the Technical Specifications that will standardize terminology, relocate information to the Bases, remove extraneous information, and make minor format changes will not result in any technical changes to the current requirements. Therefore, these additional changes will not result in a significant reduction in a margin of safety.

Based on the staff's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 12, 2000.

Description of amendment request: The proposed amendment would make changes to Hope Creek Generating Station (HCGS) Technical Specifications (TS) and Bases associated with the drywell vacuum breakers and the suppression pool vacuum breakers. The proposed changes are intended to provide consistency between the HCGS TS and the Standard Technical

Specifications (STS) (NUREG–1433). These changes include revising or deleting specific Limiting Conditions for Operation and Surveillance Requirements and include relocating information from these sections to the Bases. In addition, a change to the Containment Systems Surveillance Requirements was proposed to correct the hierarchical format of that section.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The function of the suppression-chamber-to-drywell vacuum breakers is to relieve vacuum in the drywell by allowing air and steam flow from the suppression chamber to the drywell when the drywell is at a negative pressure with respect to the suppression chamber. A negative differential pressure across the drywell wall is caused by rapid depressurization of the drywell. Steam condensing in the drywell as a result of a primary system rupture results in the most severe pressure transient.

The function of the reactor building-to-suppression chamber vacuum breakers is to relieve vacuum when the primary containment depressurizes below the reactor building pressure. If the drywell depressurizes below reactor building pressure, the negative differential pressure is mitigated by flow through the reactor building-to-suppression chamber vacuum breakers and through the suppression-chamber-to-drywell vacuum breakers. A negative differential pressure across the drywell wall is caused by rapid depressurization of the drywell. The maximum depressurization rate is a function of the primary containment spray flow rate and temperature and the assumed initial conditions of the primary containment atmosphere.

Each proposed change to the vacuum breaker TS was categorized by the licensee as either administrative, more restrictive, less restrictive, or as a relocation. In addition, the licensee made changes to the bases to capture the information removed from the associated Action Steps and to be consistent with the STS. The administrative changes eliminate, replace, or add words or phrases, to provide clarity or to achieve consistency with the STS. The more restrictive changes reduce the number of vacuum breakers allowed to be open or reduces the amount of time allowed to close the open valves. The less restrictive changes: (1) Eliminate the surveillance requirements associated with the vacuum breaker position indicators; (2) reduce the frequency of vacuum breaker position verification; (3) increase the time requirement for functional testing subsequent to steam discharged to the suppression chamber from the safety-relief valves; (4) increase the number of allowable inoperable valves in one vacuum breaker assembly; (5) eliminate repetitious visual inspections; and (6) eliminate channel calibration as a means to determine operability of the inboard isolation valve auto-open control system. The relocation changes move information from the action steps to the bases.

The licensee stated in their October 12, 2000, application that neither the vacuum breakers, the vacuum breaker position indication, nor the vacuum breaker actuation system are initiators of any analyzed event. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated. In addition, the licensee's application states that the proposed changes will ensure the operability of the vacuum breakers, will provide assurance that the containment integrity and venting capability are maintained or restored within 1 hour, and that sufficient vacuum breakers will remain operable to mitigate the assumed accidents. Therefore, there is no significant increase in the consequences of an accident previously evaluated. The licensee further stated that any future changes to the licensee-controlled documents containing relocated requirements will be evaluated in accordance with the PSEG Nuclear 10 CFR 50.59 program. Consequently, no significant increase in the consequences of an accident previously evaluated will be allowed without prior Nuclear Regulatory Commission (NRC) approval. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously analyzed.

The licensee stated in their application that the proposed change does not involve a physical alteration of the plant and does not introduce any new modes of plant operation. In addition, the licensee stated that any resulting changes to the operation of the plant will be consistent with assumptions made in the safety analysis. Therefore the proposed change does not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed change does not involve a significant reduction in a margin of safety.

The licensee stated in their application that the proposed change does not impact any safety analysis assumptions and will provide assurance that the containment integrity and venting capability are maintained or restored within 1 hour. The licensee further stated that Hope Creek experience has shown that the change in surveillance frequency of vacuum breaker position is not a significant change in operating practice. In addition, the operability of the vacuum breakers is not adversely affected by steam discharged through the safety relief valves (SRVs) and does not pose an immediate operability concern. Consequently, the potential impact from the proposed increase in the amount of time during which to perform functional testing subsequent to an SRV lift is minimal. Therefore, there is no significant reduction in a margin of safety. The licensee further stated that any future changes to the licensee-controlled documents containing relocated requirements will be evaluated in accordance with the PSEG Nuclear 10 CFR 50.59 program. Consequently, no significant reduction in a margin of safety will be allowed without prior NRC approval. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the staff's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, PSEG Nuclear—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of amendment request: October 30, 2000 (TS–407).

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to remove the term ''maximum pathway'' from the main steam isolation valve (MSIV) leakage rate Surveillance Requirement (SR) 3.6.1.3.10. This proposed change would provide consistency with 10 CFR Part 50 Appendix J leak rate testing terminology for evaluating MSIV leakage rates.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to eliminate the words ''maximum pathway'' does not affect any plant system or component, and does not impact operator performance or procedures. The leak rate testing of the MSIVs will continue to be performed in accordance with 10 CFR 50 Appendix J in a manner consistent with the guidance on leak rate testing presented in industry guidance documents and in the Standard TS. The change does not impact the design basis accident analyses presented in the Final Safety Analysis Report (FSAR). This proposed TS change is considered administrative in that no changes in leak testing methods or in disposition of leak rate results are involved. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No changes in accident analysis are involved, so the consequences of accidents will remain within the accident analysis described in the FSAR. Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change does not affect any plant system or component, and does not have any impact on plant operation. No changes in accident analyses are involved, therefore, the proposed change does not involve a significant reduction in the margin of safety as currently defined in the bases of the applicable TS section or in the FSAR. For these reasons, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET I0H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: November 6, 2000 (TS–411).

Description of amendment request: The proposed amendment would revise the technical specifications to allow two Residual Heat Removal (RHR) suppression pool cooling subsystems to be inoperable for 8 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change does not result in any hardware or operating procedure changes. The RHR Suppression Pool Cooling subsystems are not assumed to be initiators of any analyzed event. This change allows an additional 8 hours to restore required RHR Suppression Pool Cooling subsystem(s) prior to requiring the initiation of a unit shutdown. The proposed 8 hour Completion Time provides some time to restore required subsystem(s) to Operable status, yet is short enough that operating an additional 8 hours is not a significant risk.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The possibility of a new or different kind of accident from any previously evaluated is not created because the proposed change introduces no new mode of plant operation and it does not involve a physical modification to the plant.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The increased time allowed for restoring required inoperable RHR Suppression Pool Cooling subsystems is acceptable based on the small probability of an event requiring the inoperable suppression pool cooling subsystems to function and the desire to restore required subsystems prior to requiring the initiation of a plant shutdown. Delaying a plant shutdown will minimize the potential for a scram which then could result in a need for a subsystem when it is inoperable. As such, any reduction in a margin of safety will be insignificant and offset by the benefit gained from providing additional time to restore required subsystem(s), thus avoiding potential plant transients during shutdown. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET I0H, Knoxville, Tennessee 37902

NRC Section Chief: Richard P. Correia.

Three Mile Island Nuclear Station, Unit 2, Docket No. 50–320, Middletown, Pennsylvania

Date of amendment request: August 9, 2000.

Brief description of amendment request: The proposed technical specifications change request (TSCR) is to revise Three Mile Island Nuclear Generating Station, Unit 2 (TMI–2), Technical Specifications Sections 6.5.3.2, 6.5.4.1, 6.5.4.2.a, 6.5.4.2.b, 6.5.4.3, 6.5.4.3.c, 6.5.4.4 and 6.5.4.6, to eliminate the reference to Independent Onsite Safety Review Group (IOSRG) and to define the performance of the IOSRG function by the nuclear quality assurance organization. Also, two titles that no longer exist (Manager, TMI–2 Department and division vice president) were corrected. These administrative changes are similar to changes that have been already approved at other plants in Region I.

Basis for proposed no significant hazards consideration: As required by 10 CFR 50.91(a), the license has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed changes do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. None of the proposed changes involve a physical modification to the plant, a new mode of operation or a change to the UFSAR [Updated Final Safety Analysis Report] transient analyses. No Technical Specification Limiting Condition for Operation, Action Statement, or Surveillance Requirement is affected by any of the proposed changes. The proposed changes do not alter the design, function, or operation of any plant component. Therefore, the proposed amendment does not affect the probability of occurrence or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed changes do not affect assumptions contained in plant safety analyses, the physical design and/or modes of plant operation defined in the plant operating license, or Technical Specifications that preserve safety analysis assumptions. The proposed changes do not introduce a new mode of plant operation or surveillance requirement, nor involve a physical modification to the plant. The proposed changes do not alter the design, function, or operation of any plant components. Therefore, the proposed amendment does not affect the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. None of the proposed changes involve a physical modification to the plant, a new mode of operation or a change to the UFSAR transient analyses. No Technical Specification Limiting Condition for Operation, Action Statement, or Surveillance Requirement is affected. Therefore, the proposed amendment does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney For Licensee: Ernest L. Blake, Jr. Esq., Shaw, Pittman, Potts & Trowbridge 2300 N. Street, N.W., Washington, DC 20037.

NRC Section Chief: Mike Masnik.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: October 25, 2000.

Description of amendment request: The proposed amendment would make editorial and administrative changes to the Technical Specifications (TS). These changes correct spelling and grammatical errors, correct references, eliminate excessive detail related to specifying a job title, revise position titles, consolidate pages and generalize statements allowing Nuclear Regulatory Commission (NRC) approved alternatives to specified requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of the Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative or editorial in nature and do not involve any physical changes to the plant. The changes do not revise the methods of plant operation which could increase the probability or consequences of accidents. No new modes of operation are introduced by the proposed changes such that a previously evaluated accident is more likely to occur or more adverse consequences would result.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

These changes are administrative or editorial in nature and do not affect the operation of any systems or equipment, nor do they involve any potential initiating events that would create any new or different kind of accident. There are no changes to the design assumptions, conditions, configuration of the facility, or manner in which the plant is operated and maintained.

The changes do not affect assumptions contained in plant safety analyses or the physical design and/or modes of plant operation. Consequently, no new failure mode is introduced.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

There are no changes being made to the TS safety limits or safety system settings. The operating limits and functional capabilities of systems, structures and components are unchanged as a result of these administrative and editorial changes. These changes do not affect any equipment involved in potential initiating events or plant response to accidents. There is no change to the basis for any Technical Specification that is related to the establishment or maintenance of, a nuclear safety margin.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity For a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendments: October 30, 2000.

Brief description of amendments: Modify the Technical Specifications to allow a one-time-only increase in the diesel generator Action Completion Time from 72 hours to 10 days to facilitate potential repairs to an emergency diesel generator to improve reliability.

*Date of publication of individual notice in the **Federal Register:*** November 3, 2000 (65 FR 66266).

Expiration date of individual notice: December 4, 2000.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: September 20, 2000.

Brief description of amendment: The amendment allows placing a static VAR compensator into service with just one of the two protective subsystems operable.

Date of issuance: November 13, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 136.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 2, 2000 (65 FR 58829).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 13, 2000.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: March 21, as supplemented on June 14, September 26, and October 16, 2000.

Brief description of amendment: The proposed amendment revised the Technical Specifications to delete the reporting requirements for the core spray sparger inspection.

Date of Issuance: November 2, 2000.

Effective date: November 2, 2000 and shall be implemented within 30 days of issuance.

Amendment No.: 217.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** September 22, 2000 (65 FR 57404).

The June 14, September 26, and October 16, 2000, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 2, 2000.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: June 30, as supplemented on September 26, 2000.

Brief description of amendment: The proposed amendment revised the Technical Specifications (TSs) to establish that the existing Safety Limit Minimum Critical Power Ratio contained in TS 2.1.A is applicable for the next operating cycle (Cycle 18).

Date of Issuance: November 3, 2000.

Effective date: November 3, 2000 and shall be implemented within 30 days of issuance.

Amendment No.: 218.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 22, 2000 (65 FR 57406).

The September 26, 2000, letter provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 3, 2000.

No significant hazards consideration comments received: No.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: November 19, 1999, as supplemented July 18, 2000.

Brief description of amendments: The amendments revise Technical Specification 5.5.11.c, ''Ventilation Filter Testing Program (VFTP),'' to include the requirement for laboratory testing of Engineered Safety Feature Ventilation System charcoal samples per American Society for Testing and Materials (ASTM) D3803–1989, ''Standard Test Method for Nuclear-Grade Activated Carbon,'' in response to Generic Letter 99–02, ''Laboratory Testing of Nuclear-Grade Activated Charcoal,'' dated June 3, 1999.

Date of issuance: November 8, 2000.

Effective date: November 8, 2000, and shall be implemented within 45 days of the date of issuance.

Amendment Nos.: Unit 1–130, Unit 2–130, Unit 3–130.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 8, 2000 (65 FR 12287).

The July 18, 2000, supplement provided clarifying information that was within the scope of the original application and **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 2000.

No significant hazards consideration comments received: No.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: February 29, 2000, as supplemented by letters dated June 26 and August 18, 2000.

Brief description of amendments: The amendments revised the pressure-temperature (P–T) limits for heatup, cooldown, critical operation and inservice leak and hydrostatic test limitations for the reactor pressure vessel (RPV). The amendments replaced the current RPV P–T limit curves with three recalculated curves that are applicable to 32 effective full power years. The staff has approved the revised limits for an interim period not to exceed December 15, 2002.

Date of issuance: November 8, 2000.

Effective date: Immediately until December 15, 2002, to be implemented within 30 days.

Amendment Nos.: 144 and 130.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 5, 2000 (65 FR 17911). The June 26 and August 18, 2000, submittals provided additional information that did not change the scope of the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 8, 2000.

No significant hazards consideration comments received: No.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: April 28, 2000.

Brief description of amendments: The amendments revise License Condition 2.C.(37) for Unit 1 and License Condition 2.C.(21) for Unit 2, to specify the types of fuel movements that cannot be performed during refueling unless all control rods are fully inserted.

Date of issuance: November 9, 2000.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 145 and 131.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Operating Licenses.

Date of initial notice in ***Federal Register:*** June 14, 2000 (65 FR 37422).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 9, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: November 3, 1999, as supplemented by letters dated April 4, June 9, June 29, August 2, and August 16, 2000.

Brief description of amendment: The amendment authorized revision of the Safety Analysis Report (SAR) to increase the containment structural design pressure from 54 psig to 59 psig, revised Technical Specification (TS) Table 3.3–3 to add a containment spray actuation signal on high-high containment building pressure to terminate main feedwater and main steam flow from the unaffected steam generator, revised TS 3.6.1.4 and Figure 3.6–1 to change the allowable containment initial conditions to be consistent with analysis assumptions, and revised TS 6.15 to increase the calculated peak accident pressure in the containment leakage rate testing program from 54 psig to 58 psig. Related changes to the Bases were also made.

Date of issuance: November 13, 2000.

Effective date: As of the date of issuance to be implemented prior to the commencement of heatup from refueling outage 2R14.

Amendment No.: 225.

Facility Operating License No. NPF–6: Amendment authorized revision to the SAR and revised the TSs.

Date of initial notice in ***Federal Register:*** February 23, 2000 (65 FR 9006).

The June 29, 2000, supplement withdrew the proposed TS change to clarify the allowable containment leakage rate. The August 16, 2000, supplement withdrew the proposed TS change to increase the allowable containment spray pump degradation. The April 4, June 9, June 29, August 2, and August 16, 2000, supplemental letters provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 13, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: June 29, 2000, as supplemented by letter dated October 4, 2000.

Brief description of amendment: The amendment revised the containment cooling system Technical Specifications to require that two independent containment cooling groups are operable with two operational cooling units in each group, in Modes 1, 2, 3, and 4.

Date of issuance: November 13, 2000.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment No.: 226.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 26, 2000 (65 FR 46008). The October 4, 2000, supplement provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 13, 2000.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: January 19, 2000, as supplemented July 19, 2000.

Brief description of amendments: The amendments will increase the setpoint tolerances for the pressurizer and main steam safety valves.

Date of Issuance: November 14, 2000.

Effective Date: November 14, 2000.

Amendment Nos.: 166 and 110.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 5, 2000 (65 FR 17915). The July 19, 2000, submittal provided clarifying information that did not change the scope of the original **Federal Register** Notice or change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 14, 2000.

No significant hazards consideration comments received: No.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: June 26, 2000.

Brief description of amendment: The amendment changes the Millstone Nuclear Power Station, Unit 3, Technical Specifications (TS) Section 1.13, Definitions, ''Engineered Safety Features Response Time''; TS Section 1.28, ''Reactor Trip System Response Time''; TS Section 3.3.1, ''Instrumentation-Reactor Trip System Instrumentation''; and TS Section 3.3.2, ''Instrumentation-Engineered Safety Features Actuation System Instrumentation'' to provide for verification of response time for selected components provided that the components and the methodology for verification have been previously reviewed and approved by the Nuclear Regulatory Commission.

Date of issuance: November 3, 2000.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 187.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 9, 2000 (65 FR 48755).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 3, 2000.

No significant hazards consideration comments received: No.

PECO Energy Company, PSEG Nuclear LLC, Delmarva Power and Light Company, and Atlantic City Electric Company

Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: November 17, 1999, as supplemented June 15, 2000.

Brief description of amendments: The amendments revise TS 5.5.7.c, ''Ventilation Filter Testing Program (VFTP)'' to include the requirement for laboratory testing of Engineered Safety Feature Ventilation System charcoal samples per American Society for Testing and Materials D3803–1989 and the application of a safety factor of 2.0 to the charcoal filter efficiency assumed in the plant design-basis dose analyses.

Date of issuance: November 3, 2000.

Effective date: As of date of issuance, to be implemented within 30 days.

Amendments Nos.: 237 and 240.

Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 26, 2000 (65 FR 4288). The June 15, 2000, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 3, 2000.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: June 12, 2000.

Brief description of amendment: The proposed amendment would revise Technical Specification 3/4.7.5, ''Ultimate Heat Sink,'' by increasing the minimum required service water pond level from 415 feet to 416.5 feet and decreasing the maximum allowed temperature at the discharge of the service water pumps from 95 degrees Fahrenheit to 90.5 degrees Fahrenheit.

Date of issuance: November 14, 2000.

Effective date: November 14, 2000.

Amendment No.: 149.

Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 26, 2000 (65 FR 46015).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 14, 2000.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By December 29, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above

date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: November 2, 2000, as supplemented November 3, 2000.

Description of amendment request: The amendment revises the Technical Specifications to allow reactor coolant system (RCS) inservice leak and hydrostatic testing to be performed with the reactor in the cold shutdown mode while the RCS temperature is greater than 212 °F (which normally corresponds to the hot shutdown mode).

Date of issuance: November 3, 2000.

Effective Date: As of its date of issuance and shall be implemented within 30 days.

Amendment No.: 267.

Facility Operating License No. DPR–59: Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated November 3, 2000.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Section Chief: Marsha Gamberoni.

Dated at Rockville, Maryland, this 21st day of November 2000.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–30282 Filed 11–28–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27280]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

November 21, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 18, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a

copy of any notice or order issued in the matter. After December 18, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Gulf States, Inc. (70–9751)

Entergy Gulf States, Inc. (''EGS''), 350 Pine Street, Beaumont, Texas 77701, an electric utility subsidiary company of Entergy Corporation (''Entergy''), 639 Loyola Avenue, New Orleans, LA 70113, a public utility holding company registered under the Act, has filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(d) of the Act and rules 44 and 53 under the Act.

In summary, EGS requests authority to issue a variety of securities, to form certain special purpose entities (''SPEs'') for the sole purpose of issuing one or more series of preferred securities (''SPE Securities'') and to enter into agreements with governmental entities to facilitate certain financings.

Specifically, EGS proposes, from time to time through December 31, 2005 (''Authorization Period''), to issue and sell, or to arrange for the issuance and sale of, a combination of some or all of the following securities in an aggregate principal amount of $2.2 billion (''Debt Limit''): (1) one or more series of its first mortgage bonds (''Bonds''), (2) one or more series of medium-term notes (''MTNs''), (3) one or more series of debentures (''Debentures''), (4) one or more new series of EGS' preferred stock (''Preferred Stock''), (5) one or more series of EGS' preference stock (''Preference Stock'') or (6) one or more series of tax-exempt bonds (''TEBs'') issued by one or more governmental entities.

EGS also requests authority to issue guaranties to secure subsidiary SPE obligations under the SPE Securities, and to issue subordinated debentures to the SPE in respect of the proceeds of the SPE Securities. In addition, EGS requests authority to obtain letters of credit and to issue collateral securities to secure the TEBs. Further, EGS requests authority to acquire outstanding pollution control revenue and/or industrial development bonds issued for its benefit.

Bonds, MTNs and Debentures

One or more series of Bonds, MTNs and/or Debentures may include provisions for redemption prior to maturity at various percentages of the principal amount thereof and may include restrictions on optional redemption for a given number of years. In addition, one or more series of Bonds, MTNs or Debentures may include provision for the mandatory retirement of some or all of the series prior to maturity, which will not exceed fifty years. The price, exclusive of accrued interest, to be paid to EGS for each series of Bonds, MTNs and Debentures sold at competitive bidding will be within a range (to be specified by EGS to prospective purchasers) of 95% to 105% of the principal amount of the series. No series of Bonds, MTNs or Debentures, whether fixed rate or adjustable, will bear interest at rates in excess of 15% per annum.

Preferred Securities

SPE Securities issued by an SPE will have a stated per share liquidation preference and may be registered under the Securities Act of 1933 as amended. The holders of the SPE Securities will be either (1) the limited partners (in the case of a limited partnership) or (2) the holders of preferred interests (in the case of a business trust) of the SPE and the amounts paid by such holders for the SPE will be treated as capital contributions to the SPE. The annual distribution or interest rate borne by any of the SPE Securities will not exceed 15% and the price paid for the SPE Securities will be not less than the par or stated value and not more than 105% of that value, plus accumulated dividends, if any.

SPEs issuing SPE Securities will be in the form of statutory business trusts or limited partnerships and will be created solely for the purpose of issuing one or more series of SPE Securities. EGS will directly or indirectly make an equity contribution to the SPE at the time the SPE Securities are issued and with this equity contribution, directly or indirectly acquire all of the general partnership interests, in the case of a partnership, or all of the voting interests, in the case of a business trust, in the SPE. If the SPE is a limited partnership, EGS may act as the general partner, or alternatively, EGS requests authority to organize a special purpose corporation for the sole purpose of acting as the general partner of the SPE.

EGS proposes to issue from time to time, in one or more series, Subordinated Debentures to the SPE. The SPE will use the proceeds from the sale of its SPE Securities, plus the equity contributions made to it, to purchase the Subordinated Debentures. EGS will issue the Subordinated Debentures in an aggregate principal amount not exceeding the aggregate stated amount of the SPE Securities whose sale proceeds, along with the capital contributions, were used to purchase the Subordinated Debentures.

Each series of Subordinated Debentures will mature within fifty years of issuance and the interest rates; payment dates, redemption, maturity and other terms will be substantially identical to the SPE Securities' terms and conditions. Indentures for the Subordinated Debentures will provide that they are subordinated to senior indebtedness, may provide for deferred payment up to sixty months under certain circumstances.

EGS proposes to enter into Guarantees, securing the SPE Securities which guarantee the payment of distributions, liquidation payments and certain tax related ''gross up'' amounts to SPE Securities holders, if and to the extent that the SPE has legally available funds for this purpose. Separately, EGS further proposes to issue and sell one or more new series of its Preferred Stock of no par or $100 par value, either by competitive bidding, negotiated public offering or private placement during the Authorization Period. No series of Preferred Stock will be sold if the dividend rate thereon would exceed 15% per annum. The terms of one or more series of Preferred Stock may include provisions for redemption at various redemption prices, may include restrictions on optional redemption for a given number of years and may include provisions for purchases in lieu of redemption. EGS may include for any series of Preferred Stock provisions for a sinking fund designed to annually redeem a given percentage of the total number of shares of such series.

Depending upon market conditions at the time of the offering of a given series of the Preferred Stock, if EGS determines that Preferred Stock having a public offering price of less than $100 per share is likely to have a materially better market reception than shares of $100 Preferred, and it is not deemed appropriate to use no par Preferred Stock, EGS may issue and sell a series of $100 Preferred to underwriters for deposit with a bank or trust company (''Depositary''). The underwriters would then receive from the Depositary and deliver to the purchasers, in a subsequent public offering, shares of depositary preferred stock (''Depositary Preferred''), each representing a stated fraction of a share of the new series of $100 Preferred Stock.

Preference Stock

EGS proposes to issue one or more series of Preference Stock, with the price to be paid being determined at the time of sale. No series of Preference Stock will be issued at less than 100% or more than 105% of the stated value per share, plus accrued dividends, if any. No series of Preference Stock would be sold if the dividend rate

would exceed 15% per annum. One or more series of Preference may include provisions for redemption at various redemption prices and/or restrictions on optional redemption for a given number of years of the life of the issue. One or more series of Preference Stock may include provisions for a sinking fund, which would be designed to redeem commencing on a specified date or number of years after the first day of the calendar month in which the series is issued, at the stated value per share of the series plus any accumulated and unpaid dividends, of all or a portion of the total number of shares of the series. Any sinking fund provision would be designed to redeem all outstanding shares of the series not later than fifty years after the date of original issuance.

Tax Exempt Bonds

Additionally, EGS requests authority to enter into installment purchase, refunding or other facilities agreements (''Facilities Agreement'') with one or more governmental entities (''Issuers''). As part of the agreement the Issuers will issue to the public one or more series of tax-exempt bonds (''TEBs'') under one or more trust indentures between the Issuer and one or more trustees (''Trustees'') in order to facilitate the purchase or construction of certain pollution control facilities (''Facilities''). Each series of TEBs will have such interest rates, maturity dates, redemption and sinking fund provisions and be secured by such means as shall be determined at the time of sale. In no event will the TEBs mature earlier than five years nor later than fifty years from the date of issuance and no series of TEBs will be sold if the fixed interest rate or initial adjustable interest rate will exceed 13% per annum. The aggregate amount of the TEBs issued will be within the Debt Limit.

The Facilities Agreement will provide for EGS to commit to purchase, acquire, construct, install, operate and/or maintain the Facilities for or on behalf of the Issuer. The Issuers will transfer the proceeds of the TEB sales to EGS and agree to transfer or make the Facilities available to the EGS on terms sufficient to provide for payment by the Issuer of the principal or redemption price and interest on the TEBs. EGS will then be responsible for paying the indebtedness on the TEBs.

In order to obtain a more favorable rating on any series of TEB, and improve their marketability, EGS proposes to issue one or more new series of Bonds or MTNs (''Collateral Bonds'') to secure the TEBs. The terms of the Collateral Bonds relating to maturity, interest payment dates, redemption provisions and acceleration will correspond to the terms of the related TEBs.

The principal amount of and interest rate borne by the Collateral Bonds could be determined in several ways: (1) If the series of TEBs bear a fixed interest rate, Collateral Bonds can be issued in a principal amount equal to the principal amount of the series and bear interest at a rate equal to the rate of interest on the series, (2) non-interest bearing Collateral Bonds can be issued in a principal amount equal to the state interest for a specified period, (3) Collateral Bonds can be issued in a principal amount equivalent to the principal amount of the series plus an amount equal to the interest on the series for a specified period, but carry a fixed interest rate that will be lower than the fixed interest rate of the series of TEBs or (4) Collateral Bonds can be issued in a principal amount equivalent to the principal mount of the series of TEBs at an adjustable rate of interest, that varies with the rate of interest on that series of TEBs, but having a ''cap'' (not greater than 13%), above which the interest on Collateral Bonds cannot rise.

In order to obtain a more favorable rating on any series of TEBs, EGS may also arrange for one or more irrevocable letters of credit for an aggregate amount of up to $52 million from one or more banks (individually and collectively the ''Bank''). To induce the Bank to issue a letter of credit, EGS would enter into one or more reimbursement agreements (''Reimbursement Agreements'') with the Bank under which EGS will agree to reimburse the Bank for all amounts drawn under the letter of credit within a specified period (not to exceed sixty months) after the date the funds are drawn and with interest at a rate that will not exceed the Bank's prime commercial rate plus 2%. In order to secure EGS' obligations under the Facilities Agreement or the Reimbursement Agreement, in the event EGS enters into a Reimbursement Agreement, EGS may also grant a lien on the Facilities or other assets.

Use of Proceeds

EGS proposes to use the net proceeds derived from the issuance and sale of Bonds, MTNs, Debentures, SPE Securities, Preferred Stock, Preference Stock and/or TEBs for general corporate purposes including, but not limited to the conduct of its business as an electric and gas utility, the repayment of outstanding securities when due and/or the possible redemption, acquisition or refunding of certain outstanding securities prior to their stated maturity or due date. EGS states that no proceeds from the issuance and sale of the above securities will be used to invest directly or indirectly in an exempt wholesale generator, as defined in section 32 of the Act, or a foreign utility company, as defined in section 33 of the Act.

Entergy Mississippi, Inc. (70–9757)

Entergy Mississippi, Inc. (''EM''), 308 Pearl Street, Jackson, Mississippi 39201, an electric utility subsidiary of Entergy Corporation (''Entergy''), 639 Loyola Avenue, New Orleans, Louisiana 70113, a public utility holding company registered under the Act, has filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(d) of the Act and rules 44 and 53 under the Act.

EM requests authority to issue a variety of securities, to form certain special purpose entities (''SPEs'') for the sole purpose of issuing one or more series of preferred securities (''SPE Securities'') and to enter into agreements with governmental entities to facilitate certain financings.

Specifically, EM proposes, from time to time through December 31, 2005 (''Authorization Period''), to issue and sell a combination of one or more series of its first mortgage bonds (''Bonds'') and one or more series of debentures (''Debentures'') in an aggregate amount of up to $540 million (''Debt Limit''). In addition, EM requests authority to issue one or more series of EM preferred securities (''Preferred Stock'') and/or to cause one or more SPEs to issue SPE Securities, in a combined aggregate outstanding principal amount of up to $50 million (''Preferred Limit'') through the Authorization Period. EM also requests authority, through the Authorization Period, to issue subordinated debentures of EM (''Subordinated Debentures'') and guarantees of EM (''Guarantees'') in connection with the issuance of SPE Securities. Further, Em requests authority through the Authorization Period to enter into arrangements for the issuance of up to $46 million of tax-exempt bonds (''TEBs'') by one or more governmental authorities and of up to $100 million of municipal securities (''Municipal Securities'') by one or more state or local municipal entities (''Municipal Entity'').

Bonds and Debentures

Bonds and/or Debentures may include provisions for redemption prior to maturity at various percentages of the principal amount of the bonds and may include restrictions on optional redemption for a given number of years. In addition, Bonds and Debentures may include provisions for the mandatory retirement of some or all series prior to

maturity, which will not exceed fifty years. The price, exclusive of accrued interest, to be paid to EM for each series of Bonds and Debentures sold at competitive bidding will be within a range (to be specified by EM to prospective purchasers) of 95% to 105% of the principal amount of the series. No series of Bonds and Debentures, whether fixed rate or adjustable rate, will bear interest at rates in excess of 15% per annum.

Preferred Securities

SPE Securities issued by an SPE will have a stated per share liquidation preference and may be registered under the Securities Act of 1933 as amended. Amounts paid by the holders of equity interests in the SPE will be treated as capital contributions to the SPE. The annual distribution or interest rate borne by any of the SPE Securities will not exceed 15%.

SPEs issuing SPE Securities will be in the form of statutory business trusts or limited partnerships and will be created solely for the purpose of issuing one or more series of SPE Securities. EM will directly or indirectly make an equity contribution to the SPE at the time the SPE Securities are issued and with this equity contribution, directly or indirectly acquire all of the general partnership interests, in the case of a partnership, or all of the voting interests, in the case of a business trust, in the SPE. If the SPE is a limited partnership, EM may act as the general partner, or alternatively, EM requests authority to organize a special purpose corporation for the sole purpose of acting as the general partner of the SPE.

EM will issue, from time to time in one or more series, Subordinated Debentures to the SPE. The SPE will use the proceeds from the sale of its SPE Securities, plus the equity contributions made to it, to purchase the Subordinated Debentures. EM will issue the Subordinated Debentures in an aggregate principal amount not to exceed the aggregate stated amount of the SPE Securities whose sale proceeds, along with the capital contributions, were used to purchase the Subordinated Debentures.

Each series of Subordinated Debentures will mature within fifty years of issuance and the interest rates, payment dates, redemption, maturity and other terms will be substantially identical to the SPE Securities' terms and conditions. Indentures for the Subordinated Debentures will provide that the Subordinated Debentures are subordinated to senior indebtedness and may provide for deferred payment up to sixty months under certain circumstances.

EM also proposes to enter into Guarantees, which guarantee the payment of distributions, liquidation payments and certain tax-related ''gross up'' amounts to the SPE Securities holders if, and to the extent that, the SPE has legally available funds for this purpose.

EM also proposes to directly issue and sell one of more new series of its no par, nominal par or $100 par value Preferred Stock either by competitive bidding, negotiated public offering or private placement. No series of Preferred Stock will be sold if the dividend rate would exceed 15% per annum. The terms of one or more series of Preferred Stock may include provisions for redemption at various redemption prices, restrictions on optional redemption for a given number of years, provisions for purchases in lieu of redemption or provisions for a sinking fund designed to annually redeem a given percentage of the total number of shares of the series.

Depending upon market conditions at the time of the offering of a given series of the Preferred Stock, if EM determines that Preferred Stock having a public offering price of less than $100 per share is likely to have a materially better market reception than shares of $100 Preferred, and it is not deemed appropriate to use no par Preferred Stock, EM may issue and sell a series of $100 Preferred to underwriters for deposit with a bank or trust company (''Depositary''). The underwriters would then receive from the Depositary and deliver to the purchasers, in a subsequent public offering, shares of depositary preferred stock (''Depository Preferred''), each representing a stated fraction of a share of the new series of $100 Preferred Stock.

Tax Exempt Bonds

EM may enter into installment purchase, refunding or other facilities agreements (''Facilities Agreements'') with one or more governmental entities (''Issuers''). As part of these agreements, the Issuers will issue one or more series of TEBs to the public under one or more trust indentures, in order to facilitate the purchase or construction of certain pollution control facilities (''Facilities''). Each series of TEBs will have interest rates, maturity dates, redemption, sinking fund and security provisions as will be determined at the time of sale. In no event will the TEBs mature earlier than five years nor later than fifty years from the date of issuance and no series of TEBs will bear an interest rate that exceeds 13% per annum. The aggregate amount of the TEBs issued will not exceed $46 million.

The Facilities Agreement will provide for EM to commit to purchase, acquire, construct, install, operate and/or maintain the Facilities for or on behalf of the Issuer. The Issuer will transfer the proceeds of the TEB sales to EM and agree to transfer or make the Facilities available to EM on terms sufficient to provide for payment by the Issuer of the principal or redemption price and interest on the TEBs. EM will then be responsible for paying the indebtedness on the TEBs.

In order to obtain a more favorable rating on any series of TEBs, and improve their marketability, EM proposes to issue one or more new series of Bonds up to an aggregate amount of $52 million (''Collateral Bonds''). The terms of the Collateral Bonds relating to maturity, interest payment dates, redemption provisions and acceleration will correspond to the terms of the related TEBs.

The principal amount of and interest rate borne by the Collateral Bonds could be determined in several ways: (1) If the series of TEBs bears a fixed interest rate, Collateral Bonds can be issued in a principal amount equal to the principal amount of the series and bear interest at a rate equal to the rate of interest on the series, (2) non-interest bearing Collateral bonds can be issued in a principal amount equal to the stated interest for a specified period, (3) Collateral Bonds can be issued in a principal amount equivalent to the principal amount of the series plus an amount equal to the interest on the series for a specified period, but carry a fixed interest rate that will be lower than the fixed interest rate of the series of TEBs or (4) Collateral Bonds can be issued in a principal amount equivalent to the principal amount of the series of TEBs at an adjustable rate of interest, that varies with the rate of interest on that series of TEBs, but having a ''cap'' (not greater than 13%), above which the interest on Collateral Bonds cannot rise.

In order to obtain a more favorable rating on any series of TEBs, EM may also arrange for one or more irrevocable letters of credit for an aggregate the amount of up to $52 million from one or more banks (individually and collectively the ''Bank''). To induce the Bank to issue a letter of credit, EM would enter into one or more reimbursement agreements (''Reimbursement Agreements'') with the Bank under which EM will agree to reimburse the Bank for all amounts drawn under the letter of credit within a specified period (not to exceed sixty months) after the date the funds are

drawn and with interest at a rate that will not exceed the Bank's prime Commercial rate plus 2%. In order to secure EM's obligations under the Facilities Agreement or the Reimbursement Agreement, in the event EM enters into a Reimbursement Agreement, EM may also grant a lien on the Facilities or other assets.

Municipal Securities

EM seeks authority to enter into arrangements for the issuance of up to $100 million aggregate principal amount of Municipal Securities to be issued by a state or local Municipal Entity. Under the arrangements, a Municipal Entity will issue securities to the public on behalf of EM and will loan money to EM through a bank, an affiliate of EM or other person, where the proceeds of the financing will be used to pay certain of EM's costs. The Municipal Entity will agree to pay to EM an amount equal to the proceeds of the Municipal Securities. Under the provisions of an agreement between EM and the Municipal Entity, EM will be obligated to make payments sufficient to provide for payment by the Municipal Entity of the principal, redemption price of, premium (if any), interest on and other amounts owing with respect to the Municipal Securities, together with related expenses.

Each series of Municipal Securities will be sold at a price, interest rate and maturity date as will be determined at the time of sale, however, no series of Municipal Securities will be sold if the fixed interest rate or adjustable interest rate would exceed 15% per annum, or if subsequent interest rates for adjustable rate would exceed 15% per annum. No series of Municipal Securities will mature earlier than one year or later than fifty years from the first day of the month of issuance.

In order to obtain a more favorable rating on any series of Municipal Securities, and improve their marketability, EM may arrange for one or more irrevocable letters of credit for an aggregate amount up to $115 million from one or more Banks. Payments with respect to principal, premium, if any, interest and purchase obligations in connection with the series of Municipal Securities coming due during the term of the letter of credit, which will not exceed ten years, will be secured by, and payable from funds (if any) drawn under, the letter of credit. To induce the Bank to issue a letter of credit, EM would enter into one or more reimbursement agreements (''Reimbursement Agreements'') with the Bank under which EM will agree to reimburse the Bank for all amounts drawn under a letter of credit within a specified period (not to exceed sixty months) after the date funds are drawn and with interest at a rate that will not exceed the Bank's prime commercial lending rate plus 2%. The terms of the Reimbursement Agreement will correspond to the terms in the letter of credit.

Any letter of credit will expire or be terminable prior to the maturity date of the series of Municipal Securities that the letter of credit supports and, in connection with the expiration or termination, the series of Municipal Securities can be made subject to mandatory redemption or purchase on or prior to the date of expiration or termination of the letter of credit, subject to the rights of owners of Municipal Securities not to have their Municipal Securities redeemed or purchased. Provision may be made, as to any series of Municipal Securities, for extension of the term of a letter of credit or for its replacement, upon its expiration or termination, by another letter of credit (having substantially the same terms as the original letter of credit) from the Bank or another bank. Extended or replacement letters of credit will expire not later than the final maturity date of the related Municipal Securities

In order to secure EM's obligations under the agreement with the Municipal Entity and/or, in the event EM enters into a Reimbursement Agreement, under the Reimbursement Agreement, EM may grant a lien, subordinate to the lien on the Bonds, on certain assets of EM (the ''Municipal Subordinate Lien'').

In addition or as an alternative to the security provided by a letter of credit or the Municipal Subordinate Lien, EM may secure the Municipal Securities through the issuance and pledge of one or more new series of first mortgage bonds (''Municipal Collateral Bonds''). The principal amount of and interest rate borne by the Municipal Collateral Bonds could be determined in several ways: (1) If the series of Municipal Securities bears a fixed interest rate, Municipal Collateral Bonds can be issued in a principal amount equal to the principal amount of the series and bear interest at a rate equal to the rate of interest on the series, (2) non-interest bearing Municipal Collateral Bonds can be issued in a principal amount equivalent to the principal amount of the series plus an amount equal to interest thereon for a specified period, (3) Municipal Collateral Bonds can be issued in a principal amount equivalent to the principal amount of the series plus an amount equal to interest on the series for a specified period, but carry a fixed interest rate that will be lower than the fixed interest rate of the series of Municipal Securities or (4) Municipal Collateral Bonds can be issued in a principal amount equivalent to the principal amount of the series of Municipal Securities at an adjustable rate of interest, varying with the rate of interest borne by the series of Municipal Securities but having a ''cap'' (not greater than 15%), above which the interest on Municipal Collateral Bonds cannot rise.

Each series of the Municipal Collateral Bonds that bear interest will bear interest at a fixed interest rate or initial adjustable interest rate not to exceed 15%. The maximum aggregate principal amount of the Municipal Collateral Bonds would be $115 million, which will be in addition to the aggregate amount requested for Bonds and/or Debentures. The terms of the Municipal Collateral Bonds relating to maturity, interest payment dates, if any, redemption provisions and acceleration will correspond to the terms of the related Municipal Securities. The terms of each series of the Municipal Collateral Bonds will not vary during the life of the series except for the interest rate of any series that bears interest at an adjustable rate.

Use of Proceeds

EM proposes to use the net proceeds derived from the issuance and sale of Bonds, Debentures, SPE Securities, Preferred Stock and TEBs for general corporate purposes including, but not limited to the conduct of its business as an electric and gas utility, the repayment of outstanding securities when due and/or the possible redemption, acquisition or refunding of certain outstanding securities prior to their stated maturity or due date. The proceeds from the issuance and sale of Bonds, Debentures, SPE Securities, Preferred Stock and TEBs will not be used to invest directly or indirectly in an exempt wholesale generator, as defined in section 32 of the Act, or a foreign utility company, as defined in section 33 of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30372 Filed 11–28–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24746; 812–12088]

TIP Funds, et al.; Notice of Application

November 21, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(f)(1)(A) of the Act.

Applicants: TIP Funds (''TIP Funds''), Turner Investment Partners, Inc. (''Turner''), Mercury Funds, Inc. (''Company''), Mercury Master Trust (''Trust''), and Fund Asset Management, L.P. (''FAM'').

Summary of Application: Applicants request an order that would permit the Company not to reconstitute its board of directors following an acquisition of substantially all of the assets of a series of TIP Funds in order to comply with the disinterested director requirement of section 15(f)(1)(A) of the Act.

Filing Dates: The application was filed on May 3, 2000, and amended on November 13, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 15, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Applicants, TIP Funds and Turner, 1235 Westlakes Drive, Suite 350, Berwyn, PA 19312; the Company, the Trust and FAM, 800 Scudders Mill Road, Plainsboro, NJ 08536.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634 or Nadya Roytblat, Assistant Director, at (202) 942–0693 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application.The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, DC 20549–0101, telephone (202) 942–8090.

Applicants' Representations

1. TIP Funds is a Massachusetts business trust registered under the Act as an open-end management investment company. Turner Large Cap Growth Fund (''Turner Fund'') was a series of TIP Funds. Turner is an investment adviser registered under the Investment Advisers Act of 1940 (the ''Advisers Act''), and served as the investment adviser to the Turner Fund until the Reorganization (as defined below).

2. The Company is a Maryland corporation registered under the Act as an open-end management investment company. The Company is comprised of seven separate series, one of which is Mercury Select Growth Fund (''Mercury Fund''). On June 19, 2000, the Mercury Fund acquired substantially all of the assets of the Turner Fund in exchange for the assumption by the Mercury Fund of substantially all of the liabilities of the turner Fund and Class I shares of the Mercury Fund equal in value to the net asset value of the assets acquired from the Turner Fund (the ''Reorganization''). The Mercury Fund invests substantially all of its assets in the Master Select Growth Portfolio (''Master Portfolio''), a series of the Trust. The Trust is a Delaware business trust registered under the Act as an open-end management investment company. FAM, an investment adviser registered under the Advisers Act, serves as the investment adviser to the Master Portfolio, and Turner serves as the subadviser.

3. Applicants state that the board of directors of the Company consists of 2 directors who are interested persons, as defined in section 2(a)(19) of the Act (''Interested Directors''), and 4 directors who are not interested persons (''Disinterested Directors''). Applicants request an order under section 6(c) of the Act exempting the Company from the provisions of section 15(f)(1)(A) of the Act with respect to the Reorganization.[1]

Applicants' Legal Analysis

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to receive ''any amount or benefit'' in connection with the sale of securities of, or sale of any interest in, such adviser (which results in the assignment of an investment advisory contract with such company) if certain conditions are met. Section 15(f)(1)(A) requires that, for a period of three years after such sale, at least 75 percent of the board of directors of an investment company (or its successor, by reorganization or otherwise) may not be ''interested persons'' with respect to either the predecessor or successor investment adviser to the investment company.

2. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act, or rule or regulation thereunder, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 15(f)(3)(B) of the Act provides that if the assignment of an investment advisory contract results from the merger of, or sale of substantially all the assets by, a registered investment company with or to another registered investment company with assets substantially greater in amount, such discrepancy in size shall be considered by the Commission in determining whether, or to what extent, to grant exemptive relief pursuant to section 6(c) from section 15(f)(1)(A). Applicants state that, as a result of the Reorganization, it could be argued that section 15(f)(1)(A) of the Act requires the board of directors of the Company to be comprised of at least 75% Disinterested Directors. Applicants request an order under section 6(c) of the Act for an exemption from the requirement in section 15(f)(1)(A) with respect to the Reorganization. Applicants acknowledge that the requested order would grant relief only for the period following the date on which the order is granted.

3. Applicants state that the aggregate net assets of the Company ($2,906,843,959 as of June 16, 2000) were substantially greater than the aggregate net assets of the Turner Fund ($45,527,647 as of June 16, 2000), making the Turner Fund's assets approximately 1.5% of the Company's assets. Applicants submit that it is appropriate for the assets of the Company as a whole, as opposed to the Mercury Fund alone, to be taken into account when considering the ''substantially greater'' test of section 15(f)(3)(B).

4. Applicants state that, in order to comply with section 15(f)(1)(A), the Company would have to either add two Disinterested Directors or reduce the number of Interested Directors from two

[1] Applicants request that the relief apply also to the board of trustees of the Trust, which is comprised of the same individuals as the board of directors of the Company.

to one. The shareholders have elected all six of the Company's current directors. If the Company were to add two Disinterested Directors, the Company would not be required to seek shareholder approval to comply with section 16(a) of the Act, which requires that at least two-thirds of a fund's directors be elected by shareholders. The Company would be vulnerable to the possibility of having to unexpectedly call a shareholders' meeting that it would not otherwise have to call in the event of the death or resignation of a director. If the Company were instead to reduce the number of Interested Directors from two to one, it would reduce the size of its board by over sixteen percent. Applicants submit that reconstitution of the Company's board would serve no public interest, and may be contrary to the interests of shareholders of the Company.

5. For the reasons stated above, applicants submit that the requested relief is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30371 Filed 11–28–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43607; File No. 265–22]

Advisory Committee on Market Information

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of the Securities and Exchange Commission Advisory Committee on Market Information.

SUMMARY: The second meeting of the Securities and Exchange Commission Advisory Committee on Market Information (''Committee'') will be held on December 14, 2000, in the William O. Douglas Room, at the Commission's main offices, 450 Fifth Street, N.W., Washington, DC., beginning at 1:00 p.m. The meeting will be open to the public, and the public is invited to submit written comments to the Committee.

ADDRESSES: Written comments should be submitted in triplicate and should refer to File No. 265–22. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609.

FOR FURTHER INFORMATION CONTACT: Anitra Cassas, Special Counsel, Division of Market Regulation, at 202–942–0089; Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 10a, and the regulations thereunder, the Designated Federal Official of the Committee, David S. Shillman, has ordered publication of this notice that the Committee will conduct a meeting on December 14, 2000, in the William O. Douglas Room at the Commission's main offices, 450 Fifth Street, N.W., Washington, DC., beginning at 1:00 p.m. The meeting will be open to the public. This will be the second meeting of the Committee. The purpose of this meeting will be to discuss appropriate models for consolidating and disseminating market information, and other issues relating to the public availability of market information in the equities and options markets.

Dated: November 21, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–30370 Filed 11–28–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43587; File No. SR–Amex–00–23]

Self Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC Relating to Member Firm Transactions with Exchange Employees

November 17, 2000.

I. Introduction

On April 13, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain Amex rules relating to member firm transactions with Amex employees. On September 25, 2000, the Amex filed Amendment No. 1 to the proposal.[3] The proposed rule change was published for comment in the **Federal Register** on October 31, 2000.[4] No comments were received on the proposal. This order approves the proposal rule change, as amended, on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to amend Amex Rule 15 (Loans by Exchange Officers) and Amex Rule 416 (Accounts of Employees of Exchange and Members), to delete Amex Rule 348 (Gratuities to Employees of Exchange), and to add new Amex Rule 417 (Transactions Involving Exchange Employees).[5]

A. Member Loans to Exchange Employees

The NASD Code of Conduct generally prohibits NASD and Amex employees from accepting loans from members, issuers, or any person with whom the NASD or Amex transacts business.[6] Amex Rule 15 also prohibits Exchange employees from accepting loans from members without prior written approval of the Exchange, but does not specifically prohibit members from making those loans to Exchange employees.

The SEC staff has recommended that the Amex adopt a rule expressly prohibiting members from making loans to Amex employees, outside routine brokerage or banking relationships.[7] The Amex therefore proposes to amend Amex Rule 15 to expressly provide that no member shall make a loan to an Exchange employee without prior approval of the Amex board of Governors. The Amex also proposes to adopt new Amex Rule 417(b), which prohibits members from making loans to Exchange employees outside of disclosed, routine banking and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Bruce Ferguson, Associate General Counsel, Legal & Regulatory Policy, Amex, to Jack Drogin, Assistant Director, Division of Market Regulation, Commission, September 25, 2000 (''Amendment No. 1''). Amendment No. 1 made a technical revision to the text of Amex Rule 417.

[4] Securities Exchange Act Release No. 43468 (October 20, 2000), 65 FR 65034 (October 31, 2000).

[5] The NASD filed a proposed rule change to adopt a new rule very similar to new Amex rule 471 (SR–NASD–00–50). *See* Securities Exchange Act Release No. 43580 (November 17, 2000).

[6] NASD Code of Conduct, Section IX, Paragraph C.3.

[7] *See* Letter from Lori Richards, Director, OCIE, SEC to Richard Syron, Chairman and Chief Executive Officer, Amex, November 6, 1998. The SEC recommendation that the Amex adopt a rule prohibiting members from making loans to Exchange employees was made as a result of an SEC examination of all SRO conflict of interest policies. The SEC staff's recommendation arose from a 1996 incident in which an Amex member made a $70,000 loan to an Amex floor employee.

brokerage agreements. Consistent with existing NASD Code of Conduct provisions, the prohibition on member loans to Exchange employees in new Amex Rule 417(b) would not apply to loans that are clearly motivated by a family or personal relationship. Thus, for example, a registered representative would not be precluded from making a personal loan to an adult child who works at the Amex.

B. Brokerage Accounts of Exchange Employees

The NASD Code of Conduct requires *disclosure* of all security and commodity accounts that an employee maintains and accounts in which an employee has a financial interest or controls trading.[8] Employees are required to instruct the institutions where such accounts are maintained to provide duplicate account statements (but not confirmations) to the NASD Office of General Counsel, which records transaction information in a database

Commentary .01 to Amex Rule 416 currently requires members to obtain the Exchange's prior written *approval* before opening an account for an Exchange employee and to provide duplicate confirmations and statements to the Exchange. To conform Amex rules to the NASD Code of Conduct, the Exchange approval requirement for the opening of accounts and the requirement to furnish duplicate confirmations are being deleted. The requirement to provide duplicate statements to the Exchange is being retained. The Amex also proposes to adopt new Amex Rule 417(a), which provides that when a member has actual notice that an Exchange employee has a financial interest in an account or controls trading in an account, duplicate account statements shall be provided by the member to the Exchange.

C. Member Gifts to Exchange Employees

Currently under Amex Rule 348, Amex members must obtain approval from the Corporate Secretary's Office before giving an Exchange employee gifts valued at over $50 per year. The Secretary's Office does not approve gifts that exceed the $50 threshold for employees in the Exchange's Member Firm Regulation area. There is no such pre-approval mechanism, however, under the NASD Code of Conduct.[9]

To conform Amex rules to the NASD Code of Conduct, Amex Rule 348 (Gratuities to Employees of Exchange) would be deleted and replaced with new Amex Rule 417(c), a provision that parallels the NASD Code of Conduct. New Amex Rules 417(c) permits members to give non-cash business gifts with an aggregate annual value of $100 to Exchange employees when no conflict of interest exists, but prohibits members from giving business gifts or courtesies of more than nominal value to any Exchange employee who has responsibility for a specific regulatory matter that involves the member. A ''regulatory matter'' would include such matters as examinations, disciplinary proceedings, membership applications, listing applications, delisting proceedings, and dispute resolution proceedings involving the member. The proposed rule would permit members to give items of nominal value to employees responsible for regulatory matters affecting the member.

III. Discussion

The Commission has reviewed carefully the Amex's proposed rule change and believes, for the reasons set forth below,[10] the proposal is consistent with the requirements of Section 6 of the Act [11] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act.[12] Section 6(b)(5) requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The proposed rule change is based upon recommendations made by SEC staff following an inspection of the ethical conduct and conflicts of interest rules, policies, and procedures of the Exchange. The amendments to the rules are designed to promote a high level of professional and personal ethical conduct by Exchange members and employees and to ensure that Exchange members and employees do not place their own personal and financial interests above the regulatory interests of the Exchange. The proposal also helps to bring the Amex's conflict of interest and ethical conduct provisions in line with those of the NASD and helps eliminate any confusion regarding the application of these provisions to employees of both self-regulatory organizations.

The Commission finds good cause for approving the proposed rule change (SR-Amex-00–23) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that Amex employees have become subject to the NASD Code of Conduct as of October 2000.[13] The Commission has not received any comments in response to the filing of the proposed rule change.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposal is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) [14] of the Act, that the proposed rule change (SR-Amex-00–23), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30377 Filed 11–28–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43582; File No. SR–Amex–99–27]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to the Proposed Rule Change Relating to Amex Rule 462, ''Minimum Margins''

November 17, 2000.

I. Introduction

On July 23, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Amex Rule 462, ''Minimum Margins,'' to revise the margin requirements for stock options and stock index options. The proposed rule

[8] NASD Code of Conduct, Section VIII, Paragraph C.

[9] NASD Code of Conduct, Section IX, Paragraph B.1.

[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] *See* SR–NASD–00–58.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change was published for comment in the **Federal Register** on September 8, 1999.[3] No comments were received on the notice of the proposed rule change. The Exchange filed Amendment Nos. 1 [4] and 2 [5] to the proposal on June 1, 2000, and September 25, 2000, respectively. This order approves the proposed rule change and grants accelerated approval to Amendment Nos. 1 and 2.

II. Description of the Proposal

A. Background

Until several years ago, the margin requirements governing listed options were set forth in Regulation T, ''Credit by Brokers and Dealers.'' [6] However, Federal Reserve Board amendments to Regulation T that became effective June 1, 1997, modified or deleted certain margin requirements regarding options transactions in favor of rules to be adopted by the options exchanges, subject to approval by the Commission.[7]

At the present time, the Exchange seeks to further revise its margin rules to implement enhancements long desired by Exchange members and member firms, public investors, and the Exchange staff. The Exchange believes that certain multiple options position strategies and other strategies that combine stock with option positions warrant more equitable margin treatment. The Exchange further believes that the offset in risk that results if the stock and options position are viewed collectively is not reflected in the current maintenance margin requirements. The Exchange believes that market participants should have the ability to use these strategies for the least amount of margin necessary. In addition, the Exchange believes it is appropriate for member firms to extend credit on certain types of long term options.

In its proposal, the Exchange reviewed all of its margin rules with a view toward updating or improving margin provisions as necessary. The Exchange also found it necessary to propose minor changes to certain rules because they are closely related to, and will be impacted by, the more substantive proposals.

In sum, the proposed revisions to the Exchange's margin rules would: (1) Permit the extension of credit on certain long term options and warrants with over nine months until expiration, and on certain long box spreads comprised entirely of European-style options; (2) recognize butterfly and box spread strategies for purposes of margin treatment and establish appropriate margin requirements for them; (3) recognize various strategies involving stocks (or other underlying instruments) paired with a long option, and provide for lower maintenance margin requirements on such hedged stock positions; (4) expand the types of short options positions that would be considered ''covered'' in a cash account, specifically, certain short positions that are components of limited risk spread strategies (*e.g.,* butterfly and box spreads); (5) allow a bank issued escrow agreement that conforms to Exchange standards to serve as cover for certain spread positions held in a cash account; and (6) update and improve, as necessary, Exchange current margin rules.

B. Definitions

Currently, Amex Rule 462 defines the ''current market value'' or ''current market price'' of an option, currency warrant, currency index warrant, or stock index warrant as the total cost or net proceeds of the option contract or warrant on the day it was purchased or sold. The Amex proposes to revise the definition to indicate that the current market value or current market price of an option, currency warrant, currency index warrant, or stock index warrant are as defined in Section 220.2 of Regulation T of the Federal Reserve Board.

The Exchange also proposes to establish definitions for ''butterfly spread'' [8] and ''box spread'' [9] options

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[3] *See* Securities Exchange Act Release No. 41808 (August 30, 1999), 64 FR 48882.

[4] *See* letter from Scott G. Van Hatten, Attorney, Amex, to Jack Drogin, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 31, 2000 (''Amendment No. 1''). Among other things, Amendment No. 1 revises the proposal to: (1) Add a definition of ''OTC Margin Bond'' to Amex Rule 462(d) to account for the Federal Reserve Board's removal of the definition from Section 220 of Regulation T of the Federal Reserve Board; (2) add a definition to Amex Rule 462(d) of ''escrow agreement'' with respect to cash settled options or warrants; (3) remove a reference to packaged vertical spreads and packaged butterfly spreads as the Exchange currently does not have Commission approval to trade these products; (4) remove certain margin provisions relating to unit investment trusts from proposed Amex Rule 462(d)(2)(I)(ii)(a)(2) and proposed Amex Rule 462(d)(10)(B)(iii) and (iv) as eligible securities to serve as a cover for index call options as a result of the approval of SR–Amex–98–33 which addressed such positions; (5) make certain other non-substantive revisions to correct typographical errors and to make the filing consistent; (6) move the definition of ''cash equivalent'' from Commentary .03(c) of Amex Rule 462 to proposed Amex Rule 462(d); (7) add citations to more clearly indicate the removal and insertion of various provisions of the Rule (for example, Amex is removing paragraphs (E) through (I) of Amex Rule 462(d)(2) as these paragraphs will be covered by proposed Amex Rule 462(d)(10)(B)); (8) remove Commentaries .06–.08 of Amex Rule 462 because the Amex has rephrased and updated these margin provisions and has relocated them to other sections of the same rule. Specifically, the Amex proposes to delete the margin provisions relating to capped style options in Commentaries .06 and .07 because the Amex has proposed new provisions relating to these options in Amex Rule 462(d)(10)(B). The Amex also proposes to delete Commentary .08 of Amex Rule 462 and current Amex Rule 462(d)(2)(O) concerning margin provisions relating to debit put spread positions in broad based European style index options because the Amex has now proposed new margin for spread provisions in Amex Rule 462(d)(2)(J); (9) delete the current provision in Commentary .09 of Amex Rule 462 relating to a margin rule regarding offset margin treatment for currency warrants, currency index warrants and listed options under a pilot program that has expired and therefore is no longer necessary; (10) revise and move provisions regarding straddle/combination from Amex Rule 462(d)10(B)(v) to proposed Amex Rule 462(d)(10)(B)(vi); and (11) move the rule text of Amex Rule 462(d)(2)(H)(iv) and current Commentary .10 of the same rule concerning margin for certain short index options positions covered by positions in Portfolio Depositary Receipts or Index Fund Shares to proposed Amex Rule 462(d)(10)(B)(ii)(c) and proposed Commentary .06 of the same rule to reflect the rule language as approved in the filing SR–Amex–98–33.

[5] *See* letter from Scott G. Van Hatten, Attorney, Amex, to Jack Drogin, Assistant Director, Division, Commission, dated September 22, 2000 (''Amendment No. 2''). Amendment No. 2 revises the proposal to: (1) Provide a technical correction to the proposed rule text for OTC options and warrants with expirations exceeding nine months (''long term''); (2) add the word ''aggregate'' in appropriate places in the definitions of ''butterfly spread'' and ''box spread;'' and delete the word ''aggregate'' in proposed Amex Rule 462(d)(10)(B)(iv) relating to ''Exceptions'' referring to the general maintenance margin requirement provision for certain hedged option or warrant strategies; and (3) change the term ''deliver'' to ''pay'' in the definition of ''escrow agreement'' in connection with cash settled options or warrants to more accurately reflect that a bank is obligated to pay to the creditor in the case of an option the exercise settlement amount (in the event an option) is assigned an exercise notice or (in the case of a warrant) the funds sufficient to purchase a warrant sold short in the event of a buy-in.

[6] 12 CFR 220 *et seq.* The Board of Governors of the Federal Reserve System (''Federal Reserve Board'') issued Regulation T pursuant to the Act.

[7] *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (Apr. 24, 1996), 61 FR 20386 (May 6, 1996) (permitting the adoption of margin requirements ''deemed appropriate by the exchange that trades the option, subject to the approval of the Securities and Exchange Commission'').

[8] The proposal defines ''butterfly spread'' as:

[A]n aggregation of positions in three series of either put or call options all having the same underlying component or index and time of expiration, and based on the same aggregate current underlying value, where the interval between the exercise price of each series is equal, which positions are structured as either (A) a ''long butterfly spread'' in which two short options in the same series are offset by one long option with a higher exercise price and one long option with a lower exercise price, or (B) a ''short butterfly spread'' in which two long options in the same series offset one short option with a higher exercise price and one short option with a lower exercise price. *See* Amendment No. 2, *supra* note 5.

[9] The proposal defines ''box spread'' as:

[A]n aggregation of positions in a long call option and short put option with the same exercise price (''buy side'') coupled with a long put option and short call option with the same exercise price (''sell side'') all of which have the same underlying component or index and time of expiration, and are

strategies. The definitions are important elements of the Exchange's proposal to recognize and specify cash and margin account requirements for butterfly and box spreads. The definitions will specify what multiple option positions, if held together, qualify for classification as butterfly or box spreads, and consequently are eligible for the proposed cash and margin treatment.

The proposal would define the term ''OTC margin bond.'' [10] The definition is necessary because the Exchange's margin rules currently cross-reference the Regulation T definition of ''OTC margin bond,'' which was eliminated by the Federal Reserve Board as of April 1, 1998.[11]

The Amex proposes to define an ''escrow agreement,'' when used in connection with cash settled calls, puts, currency warrants, currency index warrants or stock index warrants, carried short, any agreement issued in a form acceptable to the Exchange under which a bank holding cash, cash equivalents, one or more qualified equity securities or a combination thereof is obligated in the case of a call option or warrant; or cash, cash equivalents or a combination thereof in the case of a put option or warrant is obligated to pay to the creditor (in the case of an option) the exercise settlement amount in the event an option is assigned an exercise notice or (in the case of a warrant) the funds sufficient to purchase a warrant sold short in the event of a buy-in.[12] The Exchange also proposes to revise the definition of ''escrow agreement,'' when used in connection with non-cash settled call or put options carried short, as any agreement issued in a form acceptable to the Exchange under which a bank holding the underlying security (in the case of a call option) or required cash, cash equivalents, or a combination thereof (in the case of a put option), is obligated to deliver to the creditor (in the case of a call option) or accept from the creditor (in the case of a put option) the underlying security against payment of the exercise price in the event the call or put is assigned an exercise notice.

The Exchange also seeks to define the term ''listed.'' [13] Because the term ''listed'' is frequently used in the Exchange's margin rules, the Exchange believes that it would be more efficient to define the term once rather than specifying the meaning of the term each time it is used.

The Exchange would also define the term ''underlying stock basket.'' [14]

C. Extension of Credit on Long Term Options and Warrants

The proposal would allow extensions of credit on certain long listed and OTC [15] options (*i.e.,* put or call options on a stock or stock index) and warrant products (*i.e.,* stock index warrants, but not traditional stock warrants issued by a corporation on its own stock).[16] The proposal provides no loan value for long term foreign currency options. Only long term options or warrants with expirations exceeding nine months will be eligible for credit extension.[17] For long term listed options and warrants, the proposal requires initial and maintenance margin of not less than 75 percent of the current market value of the option or warrant. Therefore, Amex member firms would be able to loan up to 25 percent of the current market value of a long term listed option or warrant.[18]

The proposal would permit the extension of credit on certain long term OTC options and warrants. Specifically, an Amex member firm could extend credit on a OTC put or call option on a stock or stock index, and on an OTC stock index warrant. In addition to being more than nine months from expiration, a marginable OTC option or warrant must: (1) Be in-the-money and valued at all time for margin purposes at an amount not to exceed the in-the-money amount; (2) be guaranteed by the carrying broker-dealer, and (3) have an American-style [19] exercise provision.[20] The proposal requires an initial and maintenance margin of 75 percent of the long term OTC option's or warrant's in-the-money amount (*i.e.,* its intrinsic value).

When the time remaining until expiration for an option or warrant (listed or OTC) on which credit has been extended reaches nine months, the maintenance margin requirement would become 100 percent of the current market value. Options or warrants expiring in less than nine months would have no loan value under the proposal because of the leverage and volatility of those instruments.

D. Extension of Credit on Long Box Spread in European-Style Options

The proposal also would permit the extension of credit on a long box spread composed entirely of European-style options [21] that are listed or guaranteed by the carrying broker-dealer. A long box spread is a strategy that is composed of four option positions and

based on the same aggregate current underlying value, and are structured as either: (A) a ''long box spread'' in which the sell side exercise price exceeds the buy side exercise price, or (B) a ''short box spread'' in which the buy side exercise price exceeds the sell side exercise price. *See* Amendment No. 2, *supra* note 5.

[10] The proposal defines ''OTC margin bond'' as:

(1) Any debt securities not traded on a national securities exchange that meet all of the following requirements (a) at the time of the original issue, a principal amount of not less than $25,000,000 of the issue was outstanding; (b) the issue was registered under Section 5 of the Securities Act of 1933 and the issuer either files periodic reports pursuant to the Act or is an insurance company under Section 12(g)(2)(G) of the Act; or (c) at the time of the extension of credit the creditor has a reasonable basis for believing that the issuer is not in default on interest or principal payments; or (2) any private pass-through securities (not guaranteed by a U.S. government agency) that meet all of the following requirements: (a) an aggregate principal amount of not less than $25,000,000 was issued pursuant to a registration statement filed with the Commission; (b) current reports relating to the issue have been filed with the Commission; and (c) at the time of the credit extension, the creditor has a reasonable basis for believing that mortgage interest, principal payments and other distributions are being passed through as required and that the servicing agent is meeting its material obligations under the terms of the offering. *See* Amendment No. 1, *supra* note 4.

[11] *See* Board of Governors of the Federal Reserve System Docket Nos. R–0905, R–0923, and R–0944 (Jan. 8, 1998), 63 FR 2806 (Jan. 16, 1998).

[12] *See* Amendment No. 2, *supra* note 5.

[13] The proposal defines the term ''listed'' as a security traded on a registered national securities exchange or automated facility of a registered national securities association.

[14] The proposal defines ''underlying stock basket'' as:

[A] group of securities which includes each of the component securities of the applicable index and which meets the following conditions: (i) The quantity of each stock in the basket is proportional to its representation in the index; (ii) the total market value of the basket is equal to the underlying index value of the index options or warrants to be covered; (iii) the securities in the basket cannot be used to cover more than the number of index options or warrants represented by that value; and (iv) the securities in the basket shall be unavailable to support any other option or warrant transaction in the account.

[15] Unlike listed options, OTC options are not issued by The Options Clearing Corporation (''OCC''). OTC options and warrants are not listed or traded on a registered national securities exchange or through the automated quotation system of a registered securities association.

[16] Throughout the remainder of this approval order, the term ''warrant'' means this type of warrant.

[17] For any stock option, stock index option, or stock index warrant, carried long in a customer's account, that expires in nine months or less, initial margin must be deposited and maintained equal to at least 100% of the purchase price of the option or warrant.

[18] For example, if an investor purchased a listed call option on stock XYZ that expired in January 2001 for approximately $100 (excluding commissions), the investor would be required to deposit and maintain at least $75. The investor could borrow the remaining $25 from its broker. Under the Amex's current margin rules, the investor would be required to pay the entire $100. *See* Securities Exchange Act Release No. 41658 (July 27, 1999), 64 FR 42736 (August 5, 1999) (''COBE Approval Order''), at footnote 18.

[19] American-style options are exercisable on any business day prior to its expiration date and on its expiration date.

[20] *See* Amendment No. 2, *supra* note 5.

[21] A European-style option may be exercised only at its expiration pursuant to the rules of The OCC. *See* Amex Rule 900C(20).

is designed to lock in the ability to buy and sell the underlying component or index for a profit, even after netting the cost of establishing the long box spread. The two exercise prices embedded in the strategy determine the buy and the sell price.[22]

For long box spreads made up of European-style options, the proposal would require initial and maintenance margin of 50 percent of the aggregate difference in the two exercise prices (buy and sell), which results in a margin requirement slightly higher than 50 percent of the net debit typically incurred.[23] Under the proposal, a long box spread would be allowed market value for margin equity purposes of not more than 100 percent of the aggregate difference in exercise prices of the options.

E. Cash Account Treatment of Butterfly Spreads and Box Spreads, Other Spreads, and Short Options

The proposal would permit butterfly spreads and box spreads in cash-settled, European-style options eligible for the cash amount. A butterfly spread is a pairing of two standard spreads, one bullish and one bearish. To qualify for carrying in the cash account, the butterfly spreads and box spreads must meet the specifications contained in the proposed definition section,[24] and must be comprised of options that are listed or guaranteed by the carrying broker-dealer. In addition, the long options must be held in, or purchased for, the account on the same day.

For long butterfly spreads and long box spreads, the proposal would require full payment of the net debit that is incurred when the spread strategy is established. According to the Amex, full payment of the net debit incurred to establish a long butterfly or box spread will cover any potential risk to the carrying broker-dealer.[25]

Shortly butterfly spreads generate a credit balance when established (*i.e.,* the proceeds from the sale of short option components exceed the cost of purchasing long option components). However, in the worst case scenario where all options are exercised, a debit (loss) greater than the initial credit balance received would accrue to the account. To eliminate the risk to the broker-dealer carrying the short butterfly spread, the proposal will require that an amount equal to the maximum risk be held or deposited in the account in the form of cash or cash equivalents.[26] The maximum risk potential in a short butterfly spread comprised of call options is the aggregate difference between the two lowest exercise prices.[27] With respect to short butterfly spreads comprised of put options, the maximum risk potential is the aggregate difference between the two highest exercise prices. The net credit received from the sale of the short option components could be applied towards the requirement. Short box spreads also generate a credit balance when established. This credit is nearly equal to the total debit (loss) that, in the case of a short box spread, will accrue to the account if held to expiration. The proposal will require that cash or cash equivalents covering the maximum risk, which is equal to the aggregate difference in the two exercise prices involved, be held or deposited.[28] The net credit received from the sale of the short option components may be applied towards the requirement; if applied, only a small fraction of the total requirement need to be held or deposited.[29]

In addition to butterfly spreads and box spreads, the proposal will permit investors to hold in their cash accounts other spreads made up of European-style, cash-settled stock index options, stock index warrants, or currency index warrants. A short position would be considered covered, and thus eligible for the cash account, if a long position in the same European-style, cash-settled index option, stock index warrant, or currency index warrant was held in, or purchased for, the account on the same day.[30] The long and short positions making up the spread must expire concurrently, and the long position must be paid in full. Lastly, the cash account must contain cash, cash equivalents, or an escrow agreement equal to at least the aggregate exercise price differential.

The proposal also would establish requirements for the following types of options and warrants carried short in the cash account: equity options, index options, capped-style index options, stock index warrants, and currency index warrants. For each of these securities, the proposal specifies certain criteria that must be satisfied for the short position to be deemed a covered position, and thus considered eligible

[22] For example, an investor might be long 1 XYZ Jan 50 Call @ 7 and short 1 XYZ Jan 50 Put @ 1 (''buy side''), and short 1 XYZ Jan 60 Call @ 2 and long 1 XYZ Jan 60 Put @ 5½ (''sell side''). As required by the Exchange's proposed definition of ''long box spread,'' the sell exercise price exceeds the buy side exercise price. In this example, the long box spread is a riskless position because the net debit ((2 + 1) − (7 + 5½) = net debit of 9½) is less than the exercise price differential (60 − 50 = 10). Thus, the investor has locked in a profit of $50 (½ × 100). *See* CBOE Approval Order, *supra* note 18, at footnote 22.

[23] In the example appearing in the preceding footnote, the margin required (50% × (60 − 50) = 5) would be slightly higher than 50% of the net debit (50% × 9½ = 4¾). *See* CBOE Approval Order, *supra* note 18, at footnote 23.

[24] *See supra* notes 8 and 9 (definitions of butterfly and box spreads).

[25] For example, to create a long butterfly spread, which is comprised of call options, an investor may be long 1 XYZ Jan 45 Call @ 6, short 2 XYZ Jan 50 Calls @ 3 each, and long 1 XYZ Jan 55 Call @ 1. The maximum risk for this long butterfly spread is the net debit incurred to establish the strategy ((3 + 3) − (6 + 1) = net debit of 1). Under the proposal, therefore, the investor would be required to pay the net debit, or $100 (1 × 100) *See* CBOE Approval Order, *supra* note 18, at footnote 25.

[26] An escrow agreement could be used as a substitute for cash or equivalents if the agreement satisfies certain criteria. For short butterfly spreads, the escrow agreement must certify that the bank holds for the account of the customer as security for the agreement (1) cash, (2) cash equivalents, or (3) a combination thereof having an aggregate market value at the time the positions are established of not less than the amount of the aggregate difference between the two lowest exercise prices with respect to short butterfly spreads comprised of call options or the aggregate difference between the two highest exercise prices with respect to short butterfly spreads comprised of put options and that the bank will promptly pay the member organization such amount in the event the account is assigned an exercise notice on the call (put) with the lowest (highest) exercise price.

[27] For example, an investor may be short 1 XYZ Jan 45 Call @ 6, long 2 XYZ Jan 50 Calls @ 3 each, and short 1 XYZ Jan 55 Call @ 1. Under the proposal, the maximum risk for this short butterfly spread, which is comprised of call options, is equal to the difference between the two lowest exercise prices (50 − 45 = 5). If the net credit received from the sale of short option components ((6 + 1) − (3 + 3) = net credit of 1) is applied, the investor is required to deposit an additional $400 (4 × 100). Otherwise, the investor would be required to deposit $500 (5 × 100). *See* CBOE Approval Order, *supra* note 18, at footnote 27.

[28] As a substitute for cash or cash equivalents, an escrow agreement could be used if it satisfies certain criteria. For short box spreads, the escrow agreement must certify that the bank holds for the account of the customer as security for the agreement (1) cash, (2) cash equivalents, or (3) a combination thereof having an aggregate market value at the time the positions are established of not less than the amount of the aggregate difference between the exercise prices, and that the bank will promptly pay the member organization such amount in the event the account is assigned an exercise notice on either short option.

[29] To create a short box spread, an investor may be short 1 XYZ Jan 60 Put @ 5½ and long 1 XYZ Jan 60 Call @ 2 (''buy side''), and short 1 XYZ Jan 50 Call @ 7 and long 1 XYZ Jan 50 Put @ 1 (''sell side''). As required by the Exchange's proposed definition of ''short box spread'' (*supra* note 9), the buy side exercise price exceeds the sell side exercise price. In this example, the maximum risk for the short box spread is equal to the difference between the two exercise prices (60 − 50 = 10). If the net credit received from the sale of short option components ((5½ + 7) − (2 + 1) = net credit of 9½) is applied, the investor is required to deposit an additional $50 (½ − 100). Otherwise, the investor would be required to deposit $1,000 (10 × 100). *See* CBOE Approval Order, *supra* note 18, at footnote 29.

[30] Under the proposal, a long warrant may offset a short option contract and a long option contract may offset a short warrant provided they have the same underlying component or index and equivalent aggregate current underlying value.

for the cash account. For example, a short put warrant on a market index would be deemed covered if, at the time the put warrant is sold or promptly thereafter, the cash account holds cash, cash equivalents, or an escrow agreement equal to the aggregate exercise price.

F. Margin Account Treatment of Butterfly and Box Spreads

The Exchange's margin rules presently do not recognize butterfly spreads for margin purposes. Under the Exchange's current margin rules, the two spreads (bullish and bearish) that make up a butterfly spread each must be margined separately. The Exchange believes that the two spreads should be viewed in combination, and that commensurate with the lower combined risk, investors should receive the benefit of lower margin requirements.

The Exchange's proposal would recognize as a distinct strategy butterfly spreads held in margin accounts,and specify requirements that are the same as the cash account requirements for butterfly spreads.[31] Specifically, in the case of a long butterfly spread, the net debit must be paid in full. For short butterfly spreads comprised of call options, the initial and maintenance margin must equal at least the aggregate difference between the two lowest exercise prices. For short butterfly spreads comprised of put options, the initial and maintenance margin must equal at least the aggregate difference between the two highest exercise prices. The net credit received from the sale of the short option components may be applied towards the margin requirement for short butterfly spreads.

The proposed requirements for box spreads held in a margin account, where all option positions making up the box spread are listed or guaranteed by the carrying broker-dealer, also are the same as those applied to the cash account. With respect to long box spreads, where the component options are not European-style, the proposal would require full payment of the net debit that is incurred when the spread strategy is established.[32] For short box spreads held in the margin account, the proposal would require that cash or cash equivalents be deposited and maintained, covering the maximum risk, which is equal to the aggregate difference in the two exercise prices involved. The net credit received from the sale of the short option components may be applied towards the margin requirement. Generally, long and short box spreads would not be recognized for margin equity purposes; however, the proposal would allow loan value for one type of long box spread where all component options have a European-style exercise provision and are listed or guaranteed by the carrying broker-dealer.

G. Maintenance Margin Requirements for Stock Positions Held With Options Positions

The Exchange proposes to recognize, and establish reduced maintenance margin requirements for five options strategies that are designed to limit the risk of a position in the underlying component. The strategies are: (1) Long Put/Long Stock; (2) Long Call/Short Stock; (3) Conversion; (4) Reverse Conversion; and (5) Collar. Although the five strategies are summarized below in terms of a stock position held in conjunction with an overlying option (or options), the proposal is structured to also apply to components that underlie index options and warrants. For example, these same maintenance margin requirements will apply when these strategies are utilized with a stock basket underlying index options or warrants. Proposed Exchange Rule 462(d)(10)(B)(iv), ''Exceptions,'' will define the five strategies and set forth the respective maintenance requirements for the stock component of each strategy.[33]

1. Long Put/Long Stock

The Long Put/Long Stock hedging strategy requires an investor to carry in an account a long position in the component underlying the put option, and a long put option specifying equivalent units of the underlying component. The maintenance margin requirement for the Long Put/Long Stock combination would be the lesser of: (i) 10 percent of the put option aggregate exercise price, plus 100 percent of any amount by which the put option is out-of-the-money; or (ii) 25 percent of the current market value of the long stock position.[34]

2. Long Call/Short Stock

The Long Call/Short Stock hedging strategy requires an investor to carry in an account a short position in the component underlying the call option, and a long call option specifying equivalent units of the underlying component. For a Long Call/Short Stock combination, the maintenance margin requirement would be the lesser of: (i) 10 percent of the call option aggregate exercise price, plus 100 percent of any amount by which the call option is out-of-the-money; or (ii) the maintenance margin requirement of the short stock position as specified in Amex Rule 462(b).[35]

3. Conversion (Long Stock/Long Put/Short Call)

A ''Conversion'' is a long stock position held in conjunction with a long put and a short call. For a Conversion to qualify as hedged, the long put and short call must have the same expiration date and exercise price. The short call is covered by the long stock and the long put is a right to sell the stock at a predetermined price—the exercise price of the long put. Thus, regardless of any decline in market value, the stock position, in effect, is worth no less than the exercise price of the put.

Current Amex margin rules specify that no maintenance margin would be required on the short call option because it is covered, but the underlying long stock position would be margined according to the present maintenance margin requirement (*i.e.,* 25 percent of the current market value).[36] Under the

[31] *See supra,* Section II.E., ''Cash Account Treatment of Butterfly Spreads and Box Spreads, Other Spreads, and Short Options.'' The margin requirements would apply to butterfly spreads where all option positions are listed or guaranteed by the carrying broker-dealer.

[32] As discussed above in Section II.D., ''Extension of Credit on Long Box Spread in European-Style Options,'' the margin requirement for a long box spread made up of European-style options is 50% of the aggregate differrence with the two exercise prices.

[33] The Exchange's proposal provides maintenance margin relief for the stock component (or other underlying instrument) of the five identified strategies. A reduction in the initial margin for the stock component of these strategies is not currently possible because the 50% initial margin requirement under Regulation T of the Federal Reserve Board continues to apply, and the Exchange does not possess the independent authority to lower the initial margin requirement for stock. *See* CBOE Approval Order, *supra* note 18, at footnote 33.

[34] For example, if an investor is long 100 shares of XYZ @ 52 and long one XYZ Jan 50 Put @ 2, the required margin would be the lesser of ((10%×50)+(100%×2)=7) or (25%×52=13). Therefore, the investor would be required to maintain margin equal to at least $700 (7×100). *See* CBOE Approval Order, *supra* note 18, at footnote 34.

[35] For each stock carried short that has a current market value of less than $5 per share, the maintenance margin is $2.50 per share or 100% of the current market value, whichever is greater. For each stock carried short that has a current market value of $5 per share or more, the maintenance margin is $5 per share or 30% of the current market value, whichever is greater. *See* Amex Rule 462(b). For example, for an investor who is short 100 shares of XYZ @ 48 and long 1 XYZ Jan 50 Call @ 1, the required margin would be the lesser of ((10%×50)+(100%×2)=7) or (30%×48=14.4). Therefore, the investor would be required to maintain margin equal to at least $700 (7×100). *See* CBOE Approval Order, *supra* note 18, at footnote 35.

[36] Suppose an investor who is long 100 shares of XYZ @ 48, long one XYZ Jan 50 Put @ 2, and short

Continued

proposal, the maintenance margin for a Conversion would be 10 percent of the aggregate exercise price.[37]

4. Reverse Conversion (Short Stock/Short Put/Long Call)

A ''Reverse Conversion'' is a short stock position held in conjunction with a short put and a long call. As with the Conversion, the short put and long call must have the same expiration date and exercise price. Regardless of any rise in market value, the stock can be acquired for the call exercise price, in effect, the short position is valued at no more than the call exercise price. The maintenance margin requirement for a Reverse Conversion would be 10 percent of the aggregate exercise price, plus any in-the-money amount (*i.e.,* the amount by which the aggregate exercise price of the short put exceeds the current market value of the underlying stock position).[38]

5. Collar (Long Stock/Long Put/Short Call)

A ''Collar'' is a stock position held in conjunction with a long put and a short call. A Collar differs from a Conversion in that the exercise price of the long put is lower than the exercise price of the short call. Therefore, the options positions in a Collar do not constitute a pure synthetic short stock position. The maintenance margin for a Collar would be the lesser of: (i) 10 percent of the long put aggregate exercise price, plus 100 percent of any amount by which the long put is out-of-the-money; or (ii) 25 percent of the short call aggregate exercise price.[39] Current Amex margin requirements specify that the stock may not be valued at more than the call exercise price.

H. Restructuring

The Exchange proposes to update other margin provisions with Amex Rule 462 to make its margin rule consistent with the 431 Committee's (which is comprised of industry representatives with diverse areas of expertise) recommendations. Specifically, the proposal would make some minor corrections to the table in Exchange Rule 462 that displays the margin requirements for short OTC options. The proposal also would revise and update provisions regarding straddle/combination in Amex Rule 462(d)10(B)(v) and would move those provisions to proposed Amex Rule 462(d)(10)(B)(vi)(c).[40] The proposal also would delete Commentaries .06–.08 of Amex Rule 462 because these provisions have been updated and relocated to other sections of the same rule.[41] Specifically, the Amex proposes to delete the margin provisions relating to capped style options in Commentaries .06 and .07 of Amex Rule 462 because the Amex has proposed new provisions relating to these options in Amex Rule 462(d)(10)(B).[42] The Amex also proposes to delete the Commentary .08 of Amex Rule 462 and current Amex Rule 462(d)(2)(O) concerning margin provisions relating to debit put spread positions in broad based European style index options because the Amex has now proposed new margin for spread provisions in Amex Rule 462(d)(2)(J).[43] Moreover, the Exchange proposes to delete the current provision in Commentary .09 of Amex Rule 462 relating to a margin rule regarding offset margin treatment for currency warrants, currency index warrants and listed options under a pilot program that has expired and therefore is not longer necessary.[44] The Amex also would move the rule text concerning margin fro certain short index options positions covered by positions in Portfolio Depositary Receipts or Index Fund Shares from current Amex Rule 462(d)(2)(H)(iv) and current Commentary .10 of the same rule to proposed Amex Rule 462(d)(10)(B)(ii)(c) and proposed Commentary .06 of the same rule to reflect the text language that was approved by the Commission in SR–Amex–98–33.[45] The Exchange also proposes to move the definition of ''cash equivalent'' from Commentary .03(c) of Amex Rule 462 to proposed Amex rule 462(d).[46]

I. Effect of Mergers and Acquisitions on the Margin Required for Short Options

The Exchange proposes to adopt proposed Commentary .10 to Exchange Rule 462 to provide an exception to the margin requirement for short equity options in the event trading in the underlying security ceases due to a merger or acquisition. Under this exception, if an underlying security ceases to trade due to a merger or acquisition, and a cash settlement price has been announced by the issuer of the option, margin would be required only for in-the-money options and would be set at 100 percent of the in-the-money amount.

J. Determination of Value for Margin Purposes

The proposal would revise Exchange Rule 462(d)1 to make it consistent with that portion of the Exchange's proposal that allows the extension of credit on certain long term options and warrants (*i.e.,* stock options, stock index options, and stock index warrants). Currently, Exchange Rule 462(d)1 does not allow certain long term options or warrants to have market value for margin purposes. The revision would allow options and warrants eligible for loan value under proposed Exchange Rules 462 to have market value for margin purposes. The Exchange believes that this change is necessary to ensure that the value of the marginable option or warrant (the collateral) is sufficient to cover the debit carried in conjunction with the purchase.

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is

one XYZ Jan 50 Call @ 1, the present maintenance margin on the long stock position would be $1,200 ((25% × 48) × 100). However, if the price of the stock increased to 60, the Amex currently specifies that the stock may not be valued at more than the short exercise price. Thus, the maintenance margin on the long stock position would be $1,250 ((25% × 50) × 100). The writer of the call option cannot receive the benefit (*i.e.,* greater loan value) of a market value that is above the call exercise price because, if assigned an exercise, the underlying component would be sold at the exercise price, not the market price of the long position. *See* CBOE Approval Order, *supra* note 18, at footnote 36.

[37] For the example in the preceding footnote, where the investor was long 100 shares of XYZ @ 48, long 1 XYZ Jan 50 Put @ 2, and short 1 XYZ Jan 50 Call @ 1, the proposed maintenance margin requirement for the Conversion strategy would be $500 ((10% × 50) × 100). *See* CBOE Approval Order, *supra* note 18, at footnote 37.

[38] The seller of a put option has an obligation to buy the underlying component at the put exercise price. If assigned an exercise, the underlying component would be purchased (the short position in the Reverse Conversion effectively closed) at the exercise price, even if the current market price is lower. To recognize the lower market value of a component, the short put in-the-money amount is added to the requirement. For example, an investor holding a Reverse Conversion may be short 100 shares of XYZ @ 52, long 1 XYZ Jan 50 Call @ 2½, and short 1 XYZ Jan 50 Put @ 1½. If the current market value of XYZ stock drops to 30, the maintenance margin would be $2,500 ((10 × 50) + (50 − 30)) × 100). *See* CBOE Approval Order, *supra* note 18, at footnote 38.

[39] To create a Collar, an investor may be long 100 shares of XYZ @ 48, long 1 XYZ Jan 45 Put @ 4, and short 1 XYZ Jan 50 Call @ 3. The maintenance margin requirement would be the lesser of ((10% × 45) + 3 = 7½) or (25% × 50 = 12½). Therefore, the investor would need to maintain at least $750 (7½ × 100) in margin. *See* CBOE Approval Order, *supra* note 18, at footnote 39.

[40] *See* Amendment No. 1, *supra,* note 4.

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *See* Securities Exchange Act Release No. 42605 (March 31, 2000), 65 FR 18395 (April 7, 2000) (SR-Amex–98–33).

[46] *Id.*

consistent with the Section 6(b)(5) [47] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest. The Commission also finds that the proposal may serve to remove impediments to and perfect the mechanism of a free and open market by revising the Exchange's margin requirements to better reflect the risk of certain hedged options strategies.[48]

The Commission believes that it is appropriate for the Exchange to allow member firms to extend credit on certain long term options and warrants, and that such practice is consistent with Regulation T of the Federal Reserve Board. In 1996, the Federal Reserve Board amended Regulation T to enable the self-regulatory organizations (''SROs'') to adopt rules permitting the margining of options.[49] As noted above, the Amex rules approved in this order, which will permit the margining of options under the grant of authority from the Federal Reserve Board, are substantially identical to rules adopted recently by the CBOE and NYSE.[50]

The Commission believes that it is reasonable for the Exchange to restrict the extension of credit to long term options and warrants. The Commission believes that by limiting loan value to long term options and warrants, the proposal will help to ensure that the extension of credit is backed by collateral (*i.e.,* the long term option or warrant) that has sufficient value.[51] Because the expiration dates attached to options and warrants make such securities wasting assets by nature, it is important that the Exchange restrict the extension of credit to only those options and warrants that have adequate value at the time of the purchase, and during the term of the margin loan.[52]

The Commission believes that the proposed margin requirements for eligible long term options and warrants are reasonable. For long term listed options and warrants, the proposal requires that an investor deposits and maintains not less than 75 percent of the long term OTC's option's or warrant's current market value. For long term OTC options and warrants, an investor must deposit and maintain margin of not less than 75 percent of the option's or warrant's in-the-money amount (*i.e.,* its intrinsic value).[53] The Commission notes that the proposed margin requirements are more stringent than the current Regulation T margin requirements for equity securities (*i.e.,* 50 percent initial margin and 25 percent maintenance margin).

The Commission recognizes that because current Exchange rules prohibit loan value for options, increases in the value of long term options cannot contribute to margin equity (*i.e.,* appreciated long term options cannot be used to offset losses in other positions held in a margin account). Consequently, some customers may face a margin call or liquidation for a particular position even though they concurrently hold a long term option that has appreciated sufficiently in value to obviate the need for additional margin equity. The Exchange's proposal would address this situation by allowing loan value for long term options and warrants.

The Commission believes that it is reasonable for the Exchange to afford long term options and warrants loan value because mathematical models for pricing options and evaluating their worth as loan collateral are widely recognized and understood.[54] Moreover, some broker-dealers and The OCC, extend credit on options as part of their current business.[55] The Commission believes that because options market participants possess significant experience in assessing the value of options, including the use of sophisticated models, it is appropriate for them to extend credit on long term options and warrants.

Furthermore, since 1998, lenders other than broker-dealers have been permitted to extend 50 percent loan value against long listed options under Regulation U.[56] The Commission understands that the current bar preventing broker-dealers from extending credit on options may place some Amex member firms at a competitive disadvantage relative to other financial service firms. By permitting Exchange members to extend credit on long term options and warrants, the proposal should enable Exchange members to better serve customers and offer additional financing alternatives.

The Commission believes that it is appropriate for the Exchange to recognize the hedged nature of certain combined options strategies and prescribe margin and cash account requirements that better reflect the true risk of the strategy. Under current Exchange rules, the multiple positions comprising an option strategy such as a butterfly spread must be margined separately. In the case of a butterfly spread, the two component spreads (bull spread and bear spread) are margined without regard to the risk profile of the entire strategy. The net debit incurred on the bullish spread must be paid in full, and margin equal

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[47] 15 U.S.C. 78f(b)(5).

[48] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78f(c)(f).

[49] *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (April 24, 1996), 61 FR 20386 (May 6, 1996), and 12 CFR 220.12(f).

[50] *See* Securities Exchange Act Release No. 42011 (October 14, 1999), 64 FR 57172 (October 22, 1999) (order approving SR–NYSE–99–03) (''NYSE Approval Order''); and *See* CBOE Approval Order, *supra* note 18.

[51] The value of an option contract is made up of two components: intrinsic value and time value. Intrinsic value, or the in-the-money-amount, is an option contract's arithmetically determinable value based on the strike price of the option contract and the market value of the underlying security. Time value is the portion of the option contract's value that is attributable to the amount of time remaining until the expiration of the option contract. The more time remaining until the expiration of the option contract, the greater the time value component.

[52] For similar reasons, the Commission believes that it is appropriate for the Exchange to permit the extension of credit on long box spreads comprised entirely of European-style options that are listed or guaranteed by the carrying broker-dealer. Because the European-style long box spread locks in the ability to buy and sell the underlying component or index for a profit, and all of the component options must be exercised on the same expiration day, the Commission believes that the combined positions have adequate value to support an extension of credit.

[53] *See* Amendment No. 2, *supra* note 5.

[54] For example, the Black-Scholes model and the Cox Ross Rubinstein model are often used to price options. *See* F. Black and M. Scholes, *The Pricing of Options and Corporate Liabilities,* 81 Journal of Political Economy 637 (1973), and J. C. Cox, S. A. Ross, and M. Rubinstein, *Option Pricing: A Simplified Approach*, 7 Journal of Financial Economics 229 (1979).

[55] In this regard, the Commission notes that the CBOE, in its options margin proposal, stated that ''[t]he fact that market-maker clearing firms and the Options Clearing Corporation extend credit on long options demonstrates that long options are acceptable collateral to lenders. In addition, banks have for some time loaned funds to market-maker clearing firms through the Options Clearing Corporation's Market Maker Pledge Program.'' *See* CBOE Approval Order, *supra* note 18.

[56] *See* Board of Governors of the Federal Reserve System Docket Nos. R–0905, R–0923, and R–0944 (January 8, 1998), 63 FR 2806 (January 16, 1998). In adopting the final rules that permitted non-broker-dealer lenders to extend credit on listed options, the Federal Reserve Board stated that it was:

> [A]mending the Supplement to Regulation U to allow lenders other than broker-dealers to extend 50 percent loan value against listed options. Unlisted options continue to have no loan value when used as part of a mixed-collateral loan. However, banks and other lenders can extend credit against unlisted options if the loan is not subject to Regulation U [12 CFR 221 *et seq.*].

The Federal Board first proposed margining options in 1995. *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (June 21, 1995), 60 FR 33763 (June 29, 1995) (''[T]he Board is proposing to treat long positions in exchange-traded options the same as other registered equity securities for margin purposes.'').

to the exercise price differential must be deposited for the bearish spread.

The Commission believes that the revised margin and cash account requirements for butterfly spread and box spread strategies are reasonable measures that will better reflect the risk of the combined positions. Rather than view the butterfly and box spread strategies in terms of their individual option components, the Exchange's proposal would take a broader approach and require margin that is commensurate with the risk of the entire hedged position. For long butterfly spreads and long box spreads, the proposal would require full payment of the net debit that is incurred when the spread strategy is established.[57] For short butterfly spreads and short box spreads, the initial and maintenance margin required would be equal to the maximum risk potential. Thus, for short butterfly spreads comprised of call options, the margin must equal the aggregate difference between the two lowest exercise prices. For short butterfly spreads comprised of put options, the margin must equal the aggregate difference between the two highest exercise prices. For shore box spreads, the margin must equal the aggregate difference in the two exercise prices involved. In each of these instances, the net credit received from the sale of the short option components may be applied towards the requirement.

The Commission believes that the proposed margin and cash account requirements for butterfly spreads and box spreads are appropriate because the component options positions serve to offset each other with respect to risk. The proposal takes into account the defined risk of these strategies and sets margin requirements that better reflect the economic reality of each strategy. As a result, the margin requirements are tailored to the overall risk of the combined positions.

For similar reasons, the Commission approves of the proposed cash account requirements for spreads made up of European-style cash-settled stock index options, stock index warrants, or currency index warrants. Under the proposal, a short position would be considered covered, and thus eligible for the cash account, if a long position in the same European-style cash-settled stock index option, stock index warrant, or currency index warrant was held in, or purchased for, the account on the same day. In addition, the long and short positions must expire concurrently, and the cash account must contain cash, cash equivalents, or an escrow agreement equal to at least the aggregate exercise price differential.

The Commission believes that it is appropriate for the Exchange to revise the maintenance margin requirements for several hedging strategies that combine stock positions with option positions. The Commission recognizes that the hedging strategies such as the Long Put/Long Stock, Long Call/Short Stock, Conversion, Reverse Conversion, and Collar are designed to limit the exposure of the investor holding the combined stock and option positions. The proposal would modify the maintenance margin required for the stock component of a hedging strategy. For example, the stock component of a Long Put/Long Stock combination currently is margined without regard to the hedge provided by the long put position (*i.e.,* the 25 percent maintenance margin requirement for the stock component is applied in full). Under the proposal, the maintenance margin requirement for the Long Put/Long Stock combination strategy would be the lesser of: (1) 10 percent of the put option aggregate exercise price, plus 100 percent of any amount by which the put option is out-of-the money; or (2) 25 percent of the current market value of the long stock position. Although for some market values the proposed margin requirement would be the same as the current requirement, in many other cases it would be lower.[58] The Commission believes that reduced maintenance margin requirements for the stock components of hedging strategies are reasonable given the limited risk profile of the strategies.

The Commission notes that the proposed changes were reviewed carefully by the 431 Committee and the Options Subcommittee, which are comprised of industry participants who have extensive experience in margin and credit matters. In addition, as noted above, the Amex's proposal is substantially identical to rules adopted by the CBOE and the NYSE, which the Commission approved. In approving the CBOE's proposal, the Commission noted the CBOE's experience in monitoring the credit exposures of options strategies and the fact that the CBOE regularly examines the coverage of options margin as it relates to price movements in the underlying securities and index components.[59] Therefore, the Commission is confident that the proposed margin requirements are consistent with investor protection and properly reflect the risks of the underlying options positions.

The Commission notes that the margin requirements approved in this order are mandatory minimums. Therefore, an Exchange member may freely implement margin requirements that exceed the margin requirements adopted by the Exchange.[60] The Commission recognizes that the Exchange's margin requirements serve as non-binding benchmarks, and that Exchange members often establish different margin requirements for their customers based on a number of factors, including market volatility. The Commission encourages Exchange members to continue to perform independent and rigorous analyses when determining prudent levels of margin for customers.

The Commission also believes that it is reasonable for the Exchange to define ''butterfly spread'' [61] and ''box spread.'' [62] These definitions will specify which multiple options positions, if held together, qualify for classification as butterfly or box spreads, and consequently are eligible for the proposed cash and margin treatments. The Commission believes that it is important for the Exchange to clearly define which options strategies are eligible for the proposed margin treatment.

The Commission also believes that it is reasonable for the Amex to revise its definition of ''current market value'' and ''current market price'' in Amex Rule 462(d) to conform to Regulation T of the Federal Reserve Board. A linkage to the Regulation T definition should keep the Exchange's definition equivalent to Regulation T without requiring a rule filing if the Federal Reserve Board revises its definition of Regulation T of the Federal Reserve Board. In addition, the Commission believes that it is reasonable for the Amex to define an ''escrow agreement'' in respect of cash settled options or warrants,[63] and to

[57] However, for long box spreads made up of European-style options, the margin requirement is 50% of the aggregate difference in the two exercise prices.

[58] For example, for an investor who is long 100 shares of XYZ @ 52 and long 1 XYZ Jan 50 Put @ 2, the margin required under the proposal would be $700—the lesser of ((10% × 50) + (100% × 2) = 7) or (25% × 52 = 13). In contrast, the current margin requirement would be $1,300, a difference of $600. *See* CBOE Approval Order, *supra* note 18, at footnote 63.

[59] *See* CBOE Approval Order, *supra* note 18.

[60] In this regard, the Commission notes that proposed Amex Rule 462(F) (which is currently Amex Rule 462(K)) permits the Exchange, at any time, to impose higher margin requirements than those set forth in this rule in respect to any option position(s) when it deems such higher margin requirements are appropriate.

[61] *See supra* note 8.

[62] *See supra* note 9.

[63] *See* Amendment No. 2, *supra* note 5.

revise the definition of ''escrow agreement'' in connection with non-cash settled options,[64] to establish clear requirements for these types of escrow agreements. The Commission also believes that it is reasonable for the Amex to define the term ''underlying stock basket'' [65] so that Amex Rule 462 can clarify when an underlying stock basket may serve as an offset or as a cover for an option or warrant on a market index carried short in a customer account.[66] It is also reasonable for the Exchange to codify a definition of ''OTC Margin Bond'' in its rule since this definition has been deleted from Regulation T by the Federal Reserve Board as of April 1, 1998. The Commission also believe that the Exchange's codification of the term ''listed'' [67] is appropriate in order to permit the Exchange to refer to this term, rather than specifying its meaning each time the term is used. It is also reasonable for the Exchange to move the definition of ''cash equivalent'' from Commentary .03(c) of Amex Rule 462 to Amex Rule 462(d). The Commission believes that this will make it easier for Exchange members to refer to the definition section of the Exchange margin rule because all the definition provisions will be set forth in Amex Rule 462(d).

The Commission believes that it is appropriate for the Exchange to revise Exchange Rule 462, ''Determination of Value for Margin Purposes,'' to allow the market value of certain long term stock options, stock index options, and stock index warrants to be considered for margin equity purposes. Under the current terms of Exchange Rule 462, options contracts are not deemed to have market value. Because the Exchange's proposal will allow extensions of credit on long term options and warrants, Exchange Rule 462 must be revised to permit such marginable options and warrants to have market value for margin purposes. The Commission notes that unless Exchange Rule 462 were revised to recognize the market value of the marginable options and warrants, the Exchange's loan value proposal would be ineffective (*i.e.,* the market value of an appreciated marginable security would not be recognized or allowed to offset any loss in value of other securities held in the margin account.)

The Commission believes that it is reasonable for the Exchange to codify as part of its rules the current margin requirements for short options on securities that have been delisted due to a merger or acquisition. Under the provision, if an underlying security ceases to trade due to a merger or acquisition, and a cash settlement price has been announced by the issuer of the option, margin would be required only for in-the-money options and would be set at 100 percent of the in-the-money amount. The Commission believes that it is appropriate for the Exchange not to require margin for out-of-the-money short options. Given that a fixed settlement price will have been announced by the issuer of the option (*e.g.,* The OCC) and trading in the delisted security will have stopped, the Commission believes that margin for the out-of-the-money short option contract is unnecessary because the intrinsic value of the option contract will not appreciate or vary such that the seller risks assignments (*i.e.,* the intrinsic value will remain nil). The Commission believes that because the intrinsic value of short in-the-money options will similarly remain fixed, it is reasonable to require margin that corresponds to 100 percent of the aggregate in-the-money amount.

The Commission also believes that it is reasonable for the Exchange to update and reorganize its margin provisions within Exchange Rule 462 so that Exchange members and other market participants will find the Exchange margin provisions easier to locate and use. The Commission believes that it is reasonable for the Exchange to rephrase and update some of the margin provisions that have been relocated. The margin revisions are designed to ensure consistency among exchanges margin rules (for example, between the Amex's, the CBOE's and the NYSE's margin rules). In some instances, changes proposed to one particular margin requirement impacted the requirements for other positions and products. In other instances, the Exchange simply revised language to clarify the meaning of a provision.

The revisions to the Exchange's margin rules will significantly impact the way Exchange members calculate margin for options customers. The Commission believes that it is important for the Exchange to be adequately prepared to implement and monitor the revised margin requirements. To best accommodate the transition, the Commission believes that a phase-in period is appropriate. Therefore, the approved margin requirements shall not become effective until the earlier of February 27, 2001 or such date as the Exchange represents in writing to the Commission and to its members that the Exchange is prepared to fully implement and monitor the approved margin requirements.

The Commission expects the Exchange to issue an information memorandum to members that discusses the revised margin provisions and provides guidance to members regarding their regulatory responsibilities. The Commission also believes that it would be helpful for the Exchange to publicly disseminate (*i.e.,* via web site posting) a summary of the most significant aspects of the new margin rules and provide clear examples of how various options positions will be margined under the provisions.

The Commission finds good cause for approving proposed Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.**

Changes proposed in Amendment Nos. 1 and 2 will strengthen the proposal by making it consistent with the margin requirements supported by the 431 Committee. Because the changes conform the Amex's rule to existing rule recently adopted by the CBOE and NYSE,[68] the changes raise no new material regulatory basis.

Based on the above, the Commission finds that good cause exists, consistent with Section 19(b) of the Act,[69] to accelerate approval of Amendment Nos. 1 and 2 to the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether Amendment Nos. 1 and 2 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at

[64] *Id.*

[65] *See supra* note 14.

[66] *See* proposed Amex Rules 462(d)(I)(ii)(a), 462(d)(10)(B)(iii) and (iv).

[67] *See supra* note 13.

[68] *See* CBOE Approval Order, *supra* note 18, and *see* NYSE Approval Order, *supra* note 50.

[69] 15 U.S.C. 78s(b).

the principal office of the Amex. All submissions should refer to file number SR–Amex–99–27 and should be submitted by December 20, 2000.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[70] that the proposed rule change (SR–Amex–99–27), as amended, is approved. The approved margin requirements shall become effective the earlier of February 27, 2001 or such date the Exchange represents in writing to the Commission that the Exchange is prepared to fully implement and monitor the approved margin requirements.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[71]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30378 Filed 11–28–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43588; File No. SR–Amex–00–46]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the American Stock Exchange LLC Adopting Commentary to Section 713 that Defines ''Public Offering'' for Purposes of Shareholder Approval Rules

November 17, 2000.

On August 16, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] a proposed rule change[3] adopting commentary to Section 713 that defines ''Public Offering'' for purposes of shareholder approval rules.[4] The proposed rule change was noticed in the **Federal Register**.[5] On October 13, 2000, the Amex filed Amendment No. 2 to the proposed rule change.[6] No comments were received on the proposed rule change. This order approves the proposed rule change, as amended.

I. Background

Section 713 of the Amex Company Guide requires shareholder approval for stock issuances of 20 percent or more of an issuer's total shares outstanding, offered at less than the greater of book or market value. The applicable rules further provide, however, that shareholder approval is not required for a ''public offering,'' although that term is not defined in the rules. The Exchange proposes to adopt Commentary .01 to Section 713, to clarify the definition of ''public offering'' for issuers and interested parties. According to the Amex, a number of issuers have recently inquired as to whether certain large, below-market offerings were ''public offerings'' because the transactions were registered with the Commission prior to closing the transactions.[7] The Exchange notes that historically, for purposes of assessing the applicability of the shareholder approval rules, it has interpreted ''public offering'' as a broadly distributed, registered offering based on a firm commitment underwriting. Conversely, the Exchange does not consider a transaction to be a ''public offering'' for these purposes when the transaction is of limited distribution and/or is not based on a firm commitment underwriting, even if the offering was registered. Because the offerings described above had limited distributions and, in some cases, offerees that were pre-determined by the issuer, the Exchange believes that these transactions were not ''public offerings'' for purposes of the shareholder approval rules.

The Amex expects that proposed Commentary .01 will help to ensure issuer understanding of how Amex determines whether a transaction is a ''public offering'' for purposes of shareholder approval rules. The proposed Commentary identifies a number of factors that will be considered in establishing the existence of a ''public offering.'' Such factors include the type of offering; the marketing of the offering; the extent of the offering's distribution; the offering price; and the extent to which the issuer controls the offering and its distribution. Decisions as to whether a transaction is a ''public offering'' for purposes of these rules will be based on the facts and circumstances surrounding each particular transaction.

II. Discussion

The Commission finds that the proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5)[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[10] The Commission believes that the proposed Commentary to Section 713 is designed to educate issuers and other interested parties as to how the Exchange defines a ''public offering'' and ensure that issuers recognize which transactions require shareholder approval under the Exchange's rules, thus promoting just and equitable principles of trade and protecting investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposal, SR–Amex–00–46, as amended, be and hereby is approved.

For the Commission, by the Division of Market Regualtion, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30381 Filed 11–28–00; 8:45 am]

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[70] 15 U.S.C. 78s(b)(2).

[71] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The National Association of Securities Dealers, Inc., through its wholly owned subsidiary The Nasdaq Stock Market, Inc., filed a similar proposed rule change (SR–NASD–00–50). *See* Securities Exchange Act Release No. 43420 (Oct. 6, 2000), 65 FR 61011 (Oct. 13, 2000).

[4] The Amex filed its proposed rule change on August 16, 2000. On September 29, 2000, the Amex filed Amendment No. 1 that entirely replaced the original rule filing. *See* Letter from Michael J. Ryan, Senior Vice President, Chief of Staff and Senior Legal Officer, Amex, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission (September 29, 2000) (''Amendment No. 1''). In Amendment No. 1, the Amex also designated SR–Amex–00–46 as a proposed rule change under Section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(2).

[5] Securities Exchange Act Release No. 43419 (Oct. 6, 2000), 65 FR 61206 (Oct. 16, 2000).

[6] Amendment No. 2 made a minor technical change to the proposal. *See* Letter from Claudia Crowley, Assistant General Counsel, Amex, to Florence Harmon, Esq., Senior Special Counsel, Division, SEC (Oct. 10, 2000). Because the amendment is technical, it does not need to be published for comment.

[7] The Commission believes that this activity is not appropriate under Section 5 of the Securities Act of 1933. *See* 15 U.S.C. 77e.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43600; File No. SR–CHX–00–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Its Market Program and Floor Trading Operations

November 21, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 23, 2000, the Chicago Stock Exchange, Incorporated (''Exchange'' or ''CHX'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its rules relating to its market maker program and to its floor trading operations. Specifically, the Exchange proposes to amend the following: (i) CHX Rules 8, 9 and 10 under Article XXXIV; (ii) *Interpretations and Policies* of CHX Rule 7 under Article XX; (iii) CHX Rule 10 under Article XX; and (iv) paragraph (b)(12) of CHX Rule 37 under Article XX.

Below is the text of the proposed rule change. Proposed new language is in *italics* and proposed deletions are in brackets.

* * * * *

ARTICLE XX

Regular Trading Sessions

* * * * *

Recognized Quotations

RULE 7. No change to text.

Interpretations and Policies:

.01 Specialists shall input their current markets and sizes to the quotation system [through the key terminal or the mark sense terminal] at the post *or utilize Exchange systems that provide automated generation of quotations.* These quotations shall be firm as to both price and size unless exempted under one of the conditions specified in paragraphs .06–.09 of this Rule.

.02 In respect to Dual Trading System issues specialists utilizing the Auto Quote mode are prohibited from disseminating a bid and/or offer more than *$0.10 (for issues trading in decimals) or* ⅛ point (for issues trading in fractions) away from the best ITS market.

.03 Market [M]*m*akers *and floor brokers,* while at the post, shall *provide to the specialist for* input to the quotation system their bids and/or offers which better the current Exchange market. *These bids and/or offers, and any modification or withdrawal of these bids and/or offers, must be provided to the specialist through a written quotation ticket or in any other format agreed upon by the specialist and the market maker or floor broker. The specialist must input to the quotation system any bid and/or offer which betters the current Exchange market. For purposes of this rule, a bid or offer will better the current Exchange market if it improves the price of the current bid or offer or if it causes the specialist to change the existing Exchange quotation.* [Such quotations shall remain in force until the market maker leaves the post.] Market maker *and floor broker* quotations and accompanying sizes shall be firm unless exempted under one of the conditions specified in paragraphs .06–.09 of this Rule.

Market makers and floor brokers, while at the post, may provide to the specialist their orders to buy or sell securities. The specialist must include these orders in the book to the extent required by Exchange Rules. These orders, and any modification or cancellation of these orders, must be provided to the specialist through a written order ticket or in any other format agreed upon by the specialist and the market maker or floor broker. These orders will remain in effect until cancelled or until they otherwise expire by their terms. If a market or floor broker transfers possession of an order to a specialist, the specialist is responsible for disseminating any required quotations relating to that order.

[.04 Floor Brokers, while at the post, shall input to the quotation system those bids or offers which better the current Exchange market, unless the bid or offer is cancelled or withdrawn if not executed immediately. If a floor broker transfers possession of an order to a specialist, the requirement for input to the quotation system becomes the obligation of the specialist. When a floor broker who retains possession of an order leaves the post he must withdraw his bid or offer from the quotation system. Quotations and accompanying sizes shall be firm until withdrawn unless exempted under one of the conditions specified in paragraphs .06–.09 of this Rule.]

* * * * *

Manner of Bidding and Offering

RULE 10. Bids and offers to be effective must be [audibly] made at the post and shall remain in full force until the person making the bid or offer shall [audibly] withdraw the bid or offer [announce that he is out of the market or until he leaves the post].

Interpretations and Policies:

.01 Although there may be a certain amount of negotiation by voice away from the post, every trade must be consummated at the post.

Amended Jan. 15, 1997.

.02 Clearing the Post.

Policy. All orders received by floor brokers or originated by market makers on the floor of the Exchange *and Exposable Orders, as that term is defined below, received by specialists on the floor of the Exchange* must effectively clear the post before the orders may be routed to another market, either via the ITS System or through the use of alternative means.

Floor brokers who receive an order on the floor have a fiduciary responsibility to seek a best price execution for such order. This responsibility includes clearing of the Exchange's post prior to routing an order to another market so that other buying and selling interest at the post can be checked for a potential execution that may be as good as or better than the execution available in another market.

Market makers*, in certain circumstances,* are required to provide depth and liquidity to the Exchange market, among other things. Exchange Rules require that all market maker transactions constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. In so doing, market makers must adhere to traditional agency/auction market principles on the floor. Transactions by Exchange market makers on other exchanges *or in other markets* which fail to clear the Exchange post do not constitute such a course of dealings.

Specialists have an ongoing requirement to provide depth and liquidity to the Exchange market by maintaining liquid continuous two-sided markets on the Exchange floor and insuring that those markets are fair, orderly and efficient in the public interest. To meet those requirements, specialists must adhere to traditional agency/auction market principles on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

floor. Among other things, these principles require that a specialist not route all or any part of an Exposable Order to another market, either via the ITS System or through the use of alternative means, until the specialist has first exposed the portion of the order that he intends to route elsewhere to any market makers and floor brokers at the post. An Exposable Order is all or any part of an order for more than 100 shares that is either (i) a market order or (ii) a limit order that is at or better than the ITS BBO or NBBO. Transactions by Exchange specialists on other exchanges or in other markets which fail to clear the Exchange post in the manner required by this Interpretation do not constitute a course of dealings that fulfills a specialist's obligation to insure that markets are fair, orderly and efficient in the public interest.

Notwithstanding the above, it is understood that on occasion a customer will insist on special handling for a particular order that would preclude it from clearing the post on the Exchange floor. For example, a customer might request that a specific order be given a primary market execution. These situations must be documented and reported to the Exchange. Customer directives for special handling of all orders in a particular stock or all stocks, however, will not be considered as exceptions to the clearing the post policy.

All executions resulting from bids and offers reflected on Instinet terminals residents on the Exchange floor constitute ''orders'' which are ''communicated'' to the Exchange floor. Therefore, all orders resulting from interest reflected on Instinet terminals on the Exchange floor must be handled as any other order communicated to the floor. All such orders must be presented to the post during normal trading hours. All trades between Instinet and Exchange floor members are Exchange trades and must be executed on the Exchange.

Method of Clearing the Post. Subject to Article XX, Rule 11 relating to cabinet securities, the Exchange's clearing the post policy requires the floor broker or market maker to be physically present at the post. A market maker, after requesting the specialist's market quote, must bid or offer the price and size of his intended interest at the post. A floor broker must clear the post by requesting a market quote from the specialist. *When required by these rules to clear the post, a specialist must do so by bidding or offering, at the post, the price and size of his intended interest.*

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Guaranteed Execution System and Midwest Automated Execution System

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RULE 37.

* * * * *

(b)

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(12) Automated Execution of Limit Orders.

A Specialist may voluntarily choose to activate a feature of MAX that automatically executes limit orders on a specialist's book *that are at or less than the specialist's auto acceptance level* at the limit price after both of the following conditions are met: (1) The issue is trading at the limit price in the primary market, and (2) enough transactions in the issue are executed in the primary market at prices which are equal to the limit price of the order such that the size associated with such transactions are, in aggregate, equal to or greater than the sum of (a) the size displayed at the limit price in the primary market when the limit order was entered on the specialist's book, plus (b) the size of the limit order. This feature can be activated on a stock-by-stock basis only. Once activated, it must remain activated for a minimum of five trading days and can only be deactivated on a certain day (to be determined by the Exchange from time to time) each month.

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ARTICLE XXXIV

Registered Market Makers—Equity Floor

* * * * *

Joint Participation

RULE 8. *(a) Orders Eligible for Joint Participation. Registered market makers are entitled to participate with the specialist in any round lot order in the specialist's book that is greater in size than a specialist's auto-acceptance threshold for that security. When requested by a specialist or floor broker to make a market with respect to any other order, a registered market maker is also entitled to participate in that order with the specialist or floor broker.*

(b) Extent of Joint Participation. When the bids or offers of one or more registered market makers are equal in price to those of the specialist *with respect to the orders described above,* the registered market maker or market makers as a group are entitled to participate in the transactions effected *on those orders* [thereon] to the extent of [one-third] *40%* of the total shares involved (excluding those needed to satisfy public orders).

When the bids or offers of one or more registered market makers are better in price than those of the specialist, the registered market maker or market makers as a group are entitled to the entire transaction.

Interpretations and Policies:

.01 No change to text.

Openings

RULE 9. Registered market makers as a group are entitled to participate in opening a security on the Exchange to the extent of [one-third] *40%* of the net imbalance (excluding specialist participation) of purchase and sale orders on the Exchange.

Public Outcry

RULE 10. No specialist [or market maker] shall effect a transaction for his own account *with respect to any order greater in size than his auto-acceptance threshold for that security until the specialist has first exposed that order to any market makers and floor brokers at the post. Nothing in this Rule prevents specialists from exposing, to any market makers and floor brokers at the post, any order that is equal or smaller in size than his auto-acceptance threshold.* [unless the presence of the other side of that transaction had been audibly announced at the post.]

No market maker shall effect a transaction for his own account with respect to any order until the market maker has first exposed that order to the specialist and any market makers or floor brokers at the post.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to modify the CHX's market maker program (''Program'') and to make certain changes to reflect technical enhancements to the CHX's trading operations.

Changes to the Market Maker Program. The Program was originally designed to provide supplemental liquidity to specialists on the CHX by permitting auxiliary market makers to trade for their own accounts on the floor of the CHX. Currently, the CHX market makers are required to fulfill certain market-making obligations, and in return are granted a one-third participation right in shares presented to the specialist for purchase or sale.

The CHX is engaged in an examination of how to reconfigure its operations in order to compete in a technologically driven marketplace that has begun to face competition from electronic communication networks (''ECNs'') and the NASDAQ Stock Market, Inc. (''NASDAQ'') in listed stocks. As part of this evaluation, the CHX recognized that it needs to continue to increase the automation of its trading operations and address the role of floor traders on the CHX, especially market makers that do not contribute substantially to the liquidity of the Exchange.

The CHX's evaluation included an analysis of trading by market makers. This analysis found that market makers rarely supply liquidity outside of several exchange-traded funds (''ETFs''). Specifically, market makers participate in less than 0.83% of trade volume outside of ETFs. For ETFs, especially the NASDAQ 100 Depository Receipts, market makers often participate in trades of 5,000 shares or greater. They accounted for 17% of the share volume of four ETFs during a sample period examined by the CHX (but only 2.4% of the trade volume in these issues), and a significant portion of the 17% of share volume involved market makers trading with brokers who were filling customer orders for large transactions.

In light of the data, the CHX explored several approaches to address market maker activity. One approach would have eliminated market makers because their activity is limited almost entirely to participating in large ETF transactions. In response to concerns by some members about eliminating market makers and the liquidity they provide to large, brokered orders, the CHX decided to focus on encouraging market maker participation in large orders and stimulating increased quote competition for small orders.

This proposed rule change would implement the CHX's modification of market maker obligations. Under the proposed rule change, registered market makers would be entitled to participate with the specialist in any round lot order in the specialist's book that is greater in size than the specialist's auto-acceptance threshold for a given security. For these orders, if the bids or offers of one or more registered market makers are equal to those of the specialist, the registered market maker or market makers as a group would be entitled to participate in forty percent of the total shares involved (excluding the shares needed to satisfy public orders).[3] Prior to effecting a transaction for its own account, a specialist must expose any order greater than its auto-acceptance size to market makers and floor brokers at the post. Furthermore, when the bids or offers of one or more market makers are better than those of the specialist, the market maker or market makers as a group would be entitled to participate fully in the transaction without the specialist.

With respect to orders at or less than the specialist's auto-acceptance threshold, the specialist could still request market maker interaction, in which event the market maker would be entitled to participate in that order. In addition, a specialist must request such interaction if the specialist chooses not to fill an order within the auto-acceptance parameters. A floor broker or specialist can also request market maker participation in a floor broker order. Market makers in these situations would also be entitled to participate in forty percent of the trade.

Under the proposed rules, market makers and floor brokers must continue to provide the specialist with their bids and/or offers that better the current CHX market. The specialist must input these bids and offers to the quotation system. Market makers and floor brokers may also provide their orders to buy or sell securities to the specialist, in which event the specialist must include these orders in the book as required by the CHX rules.

The proposed rule change limits market makers' ability to participate in small sized orders unless they improve the CHX quote, but offers them increased participation rights for larger sized orders and for those orders for which their participation is requested by a specialist. As a whole, the CHX believes that the proposed rule change does not alter the Program significantly, other than for small sized orders, which have not been subject to much market maker participation in the past.

The intent of the proposed rule change is to stimulate market makers to continue to provide liquidity for larger orders by increasing their participation rights for those orders. Similarly, the proposed rule change could increase quote competition on the CHX in smaller size orders by creating incentives for market makers to improve the specialist's quote. As discussed above, a market maker who improves the specialist's quote would be entitled to participate in the entire transaction. This is a change from the current rules which allows market makers to receive one-third participation for merely matching a specialist's quote. The new rule would force market makers to improve the quote to participate in a trade, but reward such improvement by providing a greater participation right to the market maker. CHX believes that this proposed rule change is consistent with the recent SEC proposals to strengthen quote competition.[4] The proposed rule change thus has the potential to benefit retail investors whose orders are usually executed automatically based on the national best bid or offer (''NBBO'') because market makers would have an incentive to narrow spreads in order to participate in the entire order.

Modifications to Trading Floor Operations Rules. The proposed rule change also makes several changes to floor procedure to incorporate the use of existing technology on the Exchange floor. The change to Interpretation .01 to CHX Rule 7 of Article XX reflects the replacement of key terminals and mark sense terminals with other Exchange systems and the use of Exchange auto-quote systems.[5] The change to Interpretation .03 to CHX Rule 7 of Article XX is intended to reduce disputes as to whether market makers and floor brokers properly vocalized their bids and offers for input into the

[3] This participation right is an increase from the current one-third participation right. The new participation level would also apply to openings as provided by Rule 9, Article.

[4] *See* Securities Exchange Act Release No. 43084 (July 28, 2000), 65 FR 48406 (August 8, 2000) (Proposing Release on Disclosure of Order Routing and Execution Practices discussing the need to strengthen quote competition). *See also* Securities Exchange Act Release No. 43590 (November 17, 2000).

[5] A similar change to this Interpretation has also been proposed in SR–CHX–99–18 (filed September 24, 1999), a filing which was primarily designed to modify the CHX's description of its limit order display rule (Article XX, Rule 7, Interpretation and Policy .05).

Exchange's quotation system. The proposal would require bids or offers that better the Exchange market [6] to be provided to the specialist via written ticket, or by any other form agreed upon by the specialist and market maker or floor broker. The proposed rule change also contains a similar requirement for limit orders left with the specialist by market makers or floor brokers.

The CHX is making a few changes to its CHX Rule 10 of Article XX. The first change would reflect the changes made to CHX Rule 7 of Article XX by removing the audibalization requirement. Because bids and offers will have to be provided to the specialist for input into the Exchange's quotation system, the audibalization requirement is no longer necessary. The proposed rule change also adds language to require specialists to adhere to agency/auction market principles. Among other things, specialists are required to clear the post of exposable orders they received on the floor.[7] Thus, a specialist would not be permitted to route exposable orders to another market until the specialist has first exposed the portion of the order that he intends to route to another market to market makers and floor brokers at the post. The intent of the proposed rule change is to extend to specialists the requirement of clearing the post that now applies to orders received by floor brokers and market makers on the floor of the Exchange. The CHX believes it is consistent with exchange auction market principles to require all market orders and marketable or displayable limit orders received by the specialist to have the opportunity to interact with other interest on the Exchange floor before being routed to another market.

Finally, the CHX is proposing to amend CHX Rule 37 of Article XX to limit the automtic execution feature of MAX, the Exchange's automatic execution system, for limit orders at or less than the specialist's auto acceptance level. Currently, if a specialist chooses to activate the limit order auto-ex feature, he must do so for all limit orders on the book regardless of size. By allowng the specialist to automatically execute these limit orders only when the orders are of a size at or less than his auto acceptance level, the specialist will be required to present larger orders to the crowd as required by the new market maker participation rules. Of course, specialists will still be obligated to exercise care and diligence to provide quality executions to manually handled limit orders if the two conditions of paragraph (b)(12) of CHX Rule 37 of Article XX are triggered by executions in the primary market.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6 [8] and Section 11 [9] of the Act. The proposal furthers the objectives of Section 6(b)(5) [10] of the Act in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The proposal is also consistent with Rule 11b–1 [11] of the Act because it is designed to require specialists and market makers to assist in the maintenance of a fair and orderly market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The CHX believes that the proposed rule change will enhance competition on the Exchange by providing an incentive for the CHX market makers to aggressively compete on quotes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–00–34 and should be submitted by December 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30375 Filed 11–28–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43577; File No. SR–CHX–00–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Incorporated, Relating to the Exchange's SuperMAX 2000 Price Improvement Program

November 16, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November

[6] To better the market, the quote would have to improve the CHX quote by one quoting increment, or otherwise cause the specialist to change the existing CHX quotation. Currently, Article XX, Rule 7, Interpretation .05 requires a specialist to input any bids or offers that increase the size that has been bid or offered at the current price. The CHX has proposed an amendment to this provision in SR–CHX–99–18, which is pending with the Commission.

[7] An exposable order will be defined in the proposed rule change as ''all or any part of an order for more than 100 shares that is either (i) a market order or (ii) a limit order that is at or better than the ITS best bid or offer or the national best bid or offer.''

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78k.

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 240.11b–1.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

6, 2000, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On November 16, 2000, the CHX amended the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the CHX rules governing its voluntary price improvement programs. Specifically, the Exchange proposes to amend Article XX, Rule 37 to add a new price improvement algorithm entitled SuperMAX 2000, applicable to all issues trading in decimal price increments. The CHX anticipates that SuperMAX 2000 will supplant all of the Exchange's existing price improvement algorithms upon completion of the securities industry transition to decimal pricing. The text of the proposed rule change is below. Additions are in italics.

ARTICLE XX

Regular Trading Sessions

* * * * *

Guaranteed Execution System and Midwest Automated Execution System

Rule 37.

* * * * *

(h) *SuperMAX 2000*

SuperMAX 2000 shall be a voluntary automatic execution program within the MAX System. SuperMAX 2000 shall be available for any security trading on the Exchange in decimal price increments. A specialist may choose to enable this voluntary program within the MAX System on a security-by-security basis.

(1) *Pricing*

(i) *In the event that an order to buy or sell at least 100 shares is received in a security in which SuperMAX 2000 has been enabled, such order shall be executed at the ITS Best Offer or NBO (for a buy order) or the ITS Best Bid or NBB (for a sell order) if (A) the spread between the ITS Best Bid and the ITS Best Offer (or NBB or NBO, for Nasdaq/NM issues) in such security at the time the order is received is less than $.03.*

(ii) *In the event that an order to buy or sell 100 shares is received in a security in which SuperMAX 2000 has been enabled, and (a) the spread between the ITS Best Bid and the ITS Best Offer (or NBB and NBO, for Nasdaq/NM issues) in such security at the time the order is received is $.03 or greater, such order shall be executed (subject to the short sale rule) at a price at least $.01 lower than the ITS Best Offer or NBO (for a buy order) or at least $.01 higher than the ITS Best Bid or NBB (for a sell order).*

(iii) *In the event that an order to buy or sell more than 100 shares is received in a security in which SuperMAX 2000 has been enabled, such order shall be executed at the ITS Best Offer or NBO, or better (for a buy order) or the ITS Best Bid or NBB, or better (for a sell order) as the specialist may designate and as is approved by the Exchange.*

(2) *Operating Time. SuperMAX 2000 will operate each day that the Exchange is open for trading from the commencement of the Primary Trading Session until the close of the Primary Trading Session; provided, however, that preopening orders shall not be eligible for SuperMAX 2000 price improvement. A specialist may enable or remove SuperMAX 2000 for a particular security only on one given day each month, as determined by the Exchange from time to time. Notwithstanding the previous sentence, during unusual market conditions, individual securities or all securities may be removed from SuperMAX 2000 with approval of two members of the Committee on Floor Procedure.*

(3) *Timing.* Orders entered into SuperMAX 2000 shall be immediately executed upon completion of the foregoing price improvement algorithm without any delay (*i.e.,* in 0 seconds).

(4) *Applicability to Odd Lots. Although an order generated by the Odd-Lot Execution Service (''OLES'') is a professional order (because it is deemed to be for the account of a broker-dealer), it is nonetheless eligible for SuperMAX 2000 execution if (i) the order is for 100 to 199 shares and (ii) the order is an OLES passively-driven system-generated market order (and not an actively managed order).*

(5) *Out of Range. Notwithstanding anything herein to the contrary, SuperMAX 2000 will not automatically execute an order if such execution would result in an out of range execution.*

(6) *Other. Any eligible order in a security for which SuperMAX 2000 has been enabled which is manually presented at the post by a floor broker must also be guaranteed an execution by the specialist pursuant to the pricing criteria set forth in paragraph (1) above. If the contra side order which would better a SuperMAX 2000 execution is presented at the post, the incoming order which is executed pursuant to the SuperMAX 2000 criteria must be adjusted to the better price.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

According to the CHX, the primary purpose of the proposed rule change is to increase the number of orders that are eligible for price improvement and to afford CHX specialists the opportunity to provide price improvement alternatives equal to or more favorable than existing alternatives.

Background

On May 22, 1995, the Commission approved a proposed CHX rule change that allows specialists on the Exchange, through the Exchange's MAX system, to provide order execution guarantees that are more favorable than those required under CHX Rule 37(a), Article XX.[4] That approval order contemplated that the CHX would file with the Commission specific modifications to the parameters of MAX that are required to implement various options under this new rule.

SuperMAX, Enhanced SuperMAX, SuperMAX Plus and Derivative SuperMAX are four existing CHX programs within the MAX system that use computerized algorithms to provide automated price improvement. The Commission has approved each of these

[3] *See* November 15, 2000 letter from Kathleen M. Boege, Associate General Counsel, CHX, to Joseph Morra, Special Counsel, Division of Market Regulation, SEC (''Amendment No. 1''). In Amendment No. 1, the CHX made a minor, technical correction to the language of proposed Rule 37(h).

[4] *See* Securities Exchange Act Release No. 35753 (May 22, 1995), 60 FR 28007 (May 26, 1995)(SR–CHX–95–08).

price improvement programs on a permanent basis.[5]

The Exchange believes that, for it to remain competitive, its specialists must be able to swiftly and meaningfully respond to the price improvement considerations articulated by the Exchange's order sending firms and their customers. To this end, the Exchange proposes the following change to its existing price improvement program.

Proposal

At present, Exchange specialists may voluntarily participate, on an issue-by-issue basis, in one of the four price improvement programs referenced above. Each of the existing price improvement programs provides for a fixed amount of price improvement) when the national BBO spread meets certain spread parameters (*e.g.,* in SuperMAX Plus, $.01 on a BBO spread of $.03 on orders from 100 to 199 shares).

Under the proposed SuperMAX 2000, customers would be guaranteed the same minimum amount of price improvement they would receive under SuperMAX Plus (*i.e.,* $.01 on a spread of $.03 on orders of 100 shares) if a specialist has enabled SuperMAX 2000; in addition, specialists would be permitted to provide additional automated price improvement on an issue-by-issue basis. This opportunity for additional price improvement would exist for all orders of 100 shares or greater.

The Exchange believes that SuperMAX 2000 will provide CHX specialists with the requisite flexibility to respond to customer price improvement requirements in a decimal pricing environment. Significantly, the proposal contemplates equality among order-sending firms (and their customers) by mandating that CHX specialists provide additional price improvement on an issue-by-issue basis; specialists would not be permitted to distinguish among order-sending firms when designating price improvement levels.

The Exchange also believes that SuperMAX 2000 would simplify the Exchange's existing price improvement framework by eliminating multiple price improvement programs with different names, requirements and results.[6] By replacing four existing price improvement programs with one comprehensive program that will incorporate (as a minimum threshold) the level of price improvement currently available, the Exchange will afford its specialists the flexibility to provide a wide variety of price improvement alternatives, all of which will be equal to or more favorable than existing alternatives.

2. Statutory Basis

The CHX believes the proposed rule change is consistent with Section 6(b)(5) of the Act[7] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition.

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The CHX has requested accelerated approval of the proposed rule change. While the Commission is not prepared to grant accelerated approval at this time, the Commission will consider granting accelerated approval of the proposal at the close of an abbreviated comment period of 15 days from the date of publication of the proposal in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CHX–00–37 and should be submitted by December 14, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30379 Filed 11–28–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43565; File No. SR–CHX–00–36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Chicago Stock Exchange; Incorporated Relating to the Trading of Nasdaq/NM Securities on the CHX

November 15, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2]

[5] *See* Securities Exchange Act Release Nos. 40017 (May 20, 1998), 63 FR 29277 (May 28, 1998)(SR–CHX–98–9) and 40235 (July 17, 1998), 63 FR 40147 (July 27, 1998), (SR–CHX–98–09)(orders approving revised SuperMAX and Enhanced SuperMAX algorithms); 41480 (June 4, 1999), 64 FR 32570 (June 17, 1999)(SR–CHX–99–04)(order approving revised SuperMAX Plus algorithm); and 42565 (March 22, 2000), 65 FR 16442 (March 28, 2000)(SR–CHX–99–24)(order approving Derivative SuperMAX algorithm).

[6] The Exchange anticipates that its existing price improvement programs, which have been amended on a pilot basis to include decimal price increments, would become obsolete once the pilot expires on February 28, 2001. In accordance with an Exchange rule approved by the Commission, the four existing price improvement programs would be deemed deleted from the Exchange's rules upon the completion of the securities industry transition to a decimal pricing environment. *See* Article XXB, Rule 4, which provides, in pertinent part, that all rule references to fractional price increments shall be deemed deleted.

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on November 1, 2000, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has requested a one-year extension of the pilot program relating to the trading of Nasdaq/NM securities on the Exchange. Specifically, the pilot program amended Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's rules. The last pilot expired on November 1, 2000. The Exchange proposes that the pilot remain in effect on a pilot basis through November 1, 2001. The text of the proposed rule is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has requested a one-year extension of the pilot program relating to the trading of Nasdaq/NM securities on the Exchange. Specifically, the pilot program amends Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's Rules. The latest pilot program expired on November 1, 2000; the Exchange proposes that the amendments remain in effect on a pilot basis through November 1, 2001.

On May 4, 1987, the Commission approved certain Exchange rules and procedures relating to the trading of Nasdaq/NM securities on the Exchange.[3] Among other things, these rules rendered the Exchange's BEST Rule guarantee (Article XX, Rule 37(a)) applicable to Nasdaq/NM securities and made Nasdaq/NM securities eligible for the automatic execution feature of the Exchange's Midwest Automated Execution System (the ''MAX'' system).[4]

On January 3, 1997, the Commission approved, on a one year pilot basis, a program that eliminated the requirement that CHX specialists automatically execute orders for Nasdaq/NM securities when the specialist is not quoting at the national best bid or best offer disseminated pursuant to SEC Rule 11Ac1–1 (the ''NBBO'').[5] When the Commission approved the program on a pilot basis, it requested that the Exchange submit a report to the Commission describing the Exchange's experience with the pilot program. The Commission stated that the report should include at least six months of trading data. Due to programming issues, the pilot program was not implemented until April, 1997. Six months of trading data did not become available until November, 1997. As a result, the Exchange requested an additional three month extension to collect the data and prepare the report for the Commission.

On December 31, 1997, the Commission extended the pilot program for an additional three months, until March 31, 1998, to give the Exchange additional time to prepare and submit the report and to give the Commission adequate time to review the report prior to approving the pilot on a permanent basis.[6] The Exchange submitted the report to the Commission on January 30, 1998. Subsequently, the Exchange requested another three-month extension, in order to give the Commission adequate time to approve the pilot program on a permanent basis.

On March 31, 1998, the Commission approved the pilot for an additional three-month period, until June 30, 1998.[7] On July 1, 1998, the Commission approved the pilot for an additional six-month period, until December 31, 1998.[8] On December 31, 1998, the Commission approved the pilot for an additional six-month period, until June 30, 1999.[9] On June 30, 1999, the Commission approved the pilot for an additional seven-month period, until January 31, 2000.[10] On January 31, 2000, the Commission approved the pilot for an additional three-month period, until May 1, 2000.[11] On May 1, 2000, the Commission approved the pilot for an additional six-month period, until November 1, 2000.[12] The Exchange now requests another extension of the current pilot program, through November 1, 2001.

Under the pilot program, specialists must continue to accept agency [13] market orders or marketable limit orders, but only for orders of 100 to 1000 shares in Nasdaq/NM securities rather than the 2099 share limit previously in place. This threshold order acceptance requirement is referred to as the ''auto acceptance threshold.'' Specialists, however, must accept all agency limit orders in Nasdaq/NM securities from 100 up to and including 10,000 shares for placement in the limit order book. Specialists are required to automatically execute Nasdaq/NM orders in accordance with certain amendments to the pilot program that recently were approved by the Commission in connection with Exchange submission SR–CHX–00–20.[14]

The pilot program requires the specialist to set the MAX auto-execution threshold at 300 shares or greater for Nasdaq/NM securities. When a CHX

[3] *See* Securities Exchange Act Release No. 24424 (May 4, 1987), 52 FR 17868 (May 12, 1987) (order approving File No. SR–MSE–87–2); *see also,* Securities Exchange Act Release Nos. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (order expanding the number of eligible securities to 100); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995) (order expanding the number of eligible securities to 500); 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999) (order expanding the number of eligible securities to 1000).

[4] The MAX system may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule and certain other orders. *See* CHX Rules, Art. XX, Rule 37(b). A MAX order that fits within the BEST parameters is executed pursuant to the BEST Rule via the MAX system. If an order is outside the BEST parameters, the BEST rule does not apply, but MAX system handling rules remain applicable.

[5] *See* Securities Exchange Act Release No. 38119 (January 3, 1997), 62 FR 1788 (January 13, 1997).

[6] *See* Securities Exchange Act Release No. 39512 (December 31, 1997), 63 FR 1517 (January 9, 1998).

[7] *See* Securities Exchange Act Release No. 39823 (March 31, 1998), 63 FR 17246 (April 8, 1998).

[8] *See* Securities Exchange Act Release No. 40150 (July 1, 1998), 63 FR 36983 (July 8, 1998).

[9] *See* Securities Exchange Act Release No. 40868 (December 31, 1998), 64 FR 1845 (January 12, 1999).

[10] *See* Securities Exchange Act Release No. 41586 (June 30, 1999), 64 FR 36938 (July 8, 1999).

[11] *See* Securities Exchange Act Release No. 42372 (January 31, 2000), 65 FR 6425 (February 9, 2000).

[12] *See* Securities Exchange Act Release No. 42740 (May 1, 2000) 65 FR 26649 (May 8, 2000).

[13] The term ''agency order'' means an order for the account of a customer, but does not include professional orders, as defined in CHX Rules, Art. XXX, Rule 2, Interp. and Policy .04. The rule defines a ''professional order'' as any order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.

[14] *See* Securities Exchange Act Release No. 43443 (October 13, 2000), 65 FR 63660 (October 24, 2000).

specialist is quoting at the NBBO, orders for a number of shares less than or equal to the size of the specialist's quote are executed automatically (up to the size of the specialist's quote). Orders of a size greater than the specialist's quote are automatically executed up to the size of the specialist's quote, with the balance of the order designated as an open order in the specialist's book, to be filled in accordance with the Exchange's rules for manual execution of orders for Nasdaq/NM securities. Such rules dictate that the specialist must either manually execute the order at the NBBO or a better price or act as agent for the order in seeking to obtain the best available price for the order on a marketplace other than the Exchange. If the specialist decides to act as agent for the order, the pilot program requires the specialist to use order-routing systems to obtain an execution where appropriate. Orders for securities quoted with a spread greater than the minimum variation are executed automatically after a fifteen-second delay from the time the order is entered into MAX. The size of the specialist's bid or offer is then automatically decremented by the size of the execution. When the specialist's quote is exhausted, the system generates an autoquote at an increment away from the NBBO, as determined by the specialist from time to time, for either 100 or 1000 shares, depending on the issue.[15]

When the specialist is not quoting a Nasdaq/NM security at the NBBO, an order that is of a size less than or equal to the auto execution threshold designated by the specialist will execute automatically at the NBBO price up to the size of the auto execution threshold. Orders of a size greater than the auto execution threshold will be designated as open orders in the specialist's book and manually executed, unless the order-sending firm previously has advised the specialist that it elects partial automatic execution, in which event the order will be executed automatically up to the size of the auto execution threshold, with the balance of the order to be designated as an open order in the specialist's book.[16]

Whether the specialist is quoting at the NBBO or not, ''oversized'' orders, *i.e.,* orders that are of a size greater than the auto acceptance threshold of 1000 shares (or more if designated by the specialist), are not subject to the foregoing requirements, and may be canceled within one minute of being entered into MAX or designated as an open order.

2. Statutory Basis

The proposed rule is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).[17] In particular, the proposed rule is consistent with Section 6(b)(5)[18] of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change has been filed by the Exchange as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[19] and subparagraph (f)(6) of Rule 19b–4 thereunder.[20] Consequently, because the foregoing rule change: (1) Does not significantly affect the protection of investors of the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until thirty days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange has requested that the Commission accelerate the operative date of the proposal. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, more than five business days prior to the date of the filing of the proposed rule change. The Commission finds that it is appropriate to accelerate the operative date of the proposal and designate the proposal to become operative today.[21]

The Commission notes that in approving prior extensions of this pilot program, it has found that the Exchange's program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[22] Specifically, the Commission has found that the proposed rule change is consistent with Section 6(b)(5)[23] of the Act, which requires that an Exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission has also stated its belief that the proposal is consistent with Section 11A(a)(1)(C)[24] and 11A(a)(1)(D)[25] of the Act. The Commission has found that the proposal is consistent with Section 11A(a)(1)(C) in that it seeks to ensure economically efficient execution of securities transactions, and with Section 11A(a)(1)(D) in that it attempts to foster the linking of markets for qualified securities through communication and data processing facilities.

The Commission notes, however, that while the Exchange has been working toward establishing a linkage, specialists and OTC market makers do not yet have an effective method of routing orders to each other. The

[15] Specifically, the autoquote is currently for one normal unit of trading (usually 100 shares) for issues that became subject to mandatory compliance with SEC Rule 11Ac1–4 on or prior to February 24, 1997 and 1000 shares for other issues.

[16] The ability of an order-sending firm to elect partial automatic execution of orders for Nasdaq/NM securities is the result of an amendment to the Exchange's pilot program, recently approved by the Commission in connection with Exchange submission SR–CHX–00–32. *See* Securities Exchange Act Release No. 43444 (October 13, 2000), 65 FR 63273 (October 23, 2000).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A)(i).

[20] 17 CFR 240.19b–4(f)(6).

[21] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] *See* Securities Exchange Act Release Nos. 42372 (January 31, 2000), 65 FR 6425 (February 9, 2000) (SR–CHX–99–27) and 42740 (May 1, 2000) 65 FR 26649 (May 8, 2000) (SR–CHX–00–11).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78k–1(a)(1)(C).

[25] 15 U.S.C. 78k–1(a)(1)(D).

Commission expects the Exchange to continue to work towards establishing a linkage with the Nasdaq systems as requested in the January 1997 Order.[26] In connection with this effort, the Commission has requested an update on the information provided in the December 21, 1999 report using the Exchange's surveillance system. The Commission requests that the Exchange supplement the available trading data so that it can consider issues concerning the pilot program, including the circumstances involving orders that are not automatically executed through MAX, whether orders are given the NBBO shown at the time the order is received or the NBBO posted at the time the order is executed, and what explanations are available for price disimprovement. The Commission is extending the pilot program for one year so that the Exchange may continue to compile this data for the Commission's review.

The Commission also requests that the Exchange continue its effort to rewrite Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's rules so these rules clearly explain the difference between how listed (or dually traded) securities and over-the-counter (or Nasdaq/NM) securities are routed and executed by the Exchange, and submit the new proposed language to the Commission for review and approval. Additionally, the Commission requests that the Exchange include in its rules an explanation of how the provisions of the Exchange's Best Rule interact with the Exchange's Rules governing automatic execution of orders.

The Commission does not want to interrupt the current operations of the Exchange while the above-described issues are being addressed. Therefore, the Commission finds that it is appropriate to accelerate the operative date of the proposed rule change.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–00–36 and should be submitted by December 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30384 Filed 11–28–00; 8:45 am]

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[26] *See* January 1997 Order, *supra* note 7.

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43601; File No. SR–NASD–00–13]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Valuation of Illiquid Direct Participation Program and Real Estate Investment Trust Securities on Customer Account Statements

November 21, 2000.

Introduction

On March 28, 2000, the National Association of Securities Dealers, Inc. (''NASD or Association''), through its wholly-owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), submitted to the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 thereunder,[2] a proposal to amend its rules to require general securities members to provide valuations and disclosures relating to direct participation program (''DPP'') and real estate investment trust (''REIT'') securities on customer account statements under certain circumstances. NASD Regulation amended its proposal on September 25, 2000,[3] and on October 30, 2000.[4]

The Proposal was published for comment in the **Federal Register** on April 26, 2000.[5] Five comment letters were received regarding the proposal.[6] This order approves the proposed rule change, as amended. In addition, the Commission is publishing notice to solicit comments and is simultaneously approving, on an accelerated basis, Amendment Nos. 1 and 2.

II. Background and Description of the Proposal

A. Background

NASD Rule 2340, ''Customer Account Statements,'' requires general securities

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated September 21, 2000 (''Amendment No. 1''). In Amendment No. 1, NASD Regulation proposed to delete NASD Rule 2340(b)(A) and add new paragraph (b)(4) to NASD Rule 2340. NASD Rule 2340(b)(4) states that, notwithstanding the requirement in NASD Rule 2340(b)(1)(B), a member may refrain from including a per share estimated value for a DPP or REIT security on an account statement if the member can demonstrate the value was inaccurate as of the date of the valuation or is no longer accurate as a result of a material change in the operations or assets of the program or trust.

[4] *See* letter from Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated October 27, 2000 (''Amendment No. 2''). Amendment No. 2 revised NASD Rule 2340(b)(4) to indicate that a member must refrain from including a per share estimated value for a DPP or REIT security on an account statement if the member can demonstrate the value was inaccurate as of the date of the valuation or is no longer accurate as a result of a material change in the operations or assets of the program. NASD Regulation noted that the revised provision does not relieve a member of its obligation to provide an alternative per share estimated value when the member's obligation is triggered by NASD Rule 2340(b)(1)(B).

[5] *See* Securities Exchange Act Release No. 42698 (April 18, 2000), 64 FR 24523.

[6] *See* letter from Anne Rabbitt, Assistant Vice President, Director of Investor Services, Resourcephoenix.com, to the Honorable Arthur Levitt, Chairman, Commission, dated October 10, 2000 (''Resourcephoenix.com Letter''); letter from Larry E. Goff, National Sales Manager, CNL Investment Company, to the Honorable Arthur Levitt, Chairman, Commission, dated October 3, 2000 (''CNL Letter''); letter from Christopher L. Davis, President, Investment Program Association (''IPA''), to Secretary, Commission, dated June 30, 2000 (''IPA letter''); letter from Anne Julie Ravane, Vice President and Senior Counsel, Private Client Counsel, Office of General Counsel, Merrill Lynch (''Merrill Lynch''), to Secretary, Commission, dated June 2, 2000 (''Merrill Lynch I''); and letter from Anne Julie Ravane, Vice President and Senior Counsel, Private client Counsel, Office of General Counsel, Merrill Lynch, to Secretary, Commission, dated June 5, 2000 (''Merrill Lynch I''). Merrill Lynch withdrew Merrill Lynch I and replaced it with Merrill Lynch II. *See* Merrill Lynch II.

members to send account statements to customers on at least a quarterly basis.[7] The statements must include a description of any securities position, money balances or account activity since the prior account statement was sent. An NASD member that does not carry customer accounts and does not hold customer funds and securities is exempt from the provisions of NASD Rule 2340.

In March 1994, the Subcommittee on Telecommunications and Finance of the U.S. House of Representatives (''House Subcommittee''), expressed concern to the NASD regarding the sufficiency of information provided on customer account statements with respect to the current value of illiquid partnership securities.[8] The House Subcommittee noted that investors in non-traded partnerships should be able to know how their investments are performing and expressed a belief that their might be shortcomings in current valuation reporting to that group of investors.[9]

In June 1994, the Division requested information from the NASD concerning whether it would be appropriate for self-regulatory organizations to require that members make certain disclosures regarding illiquid partnerships on customer account statements.[10] The Division suggested that, at a minimum, a member should disclose: (1) That there is no liquid market for most limited partnership interests; (2) that the value of a partnership, if any, reported on the account statement may not reflect a value at which customers can liquidate their positions; and (3) the source of any reported value, a short description of the methodology used to determine the value, and the date the value was last determined.[11]

B. The 1997 Proposal

In response to the concerns raised by the House Subcommittee and the Division, NASD Regulation filed a proposed rule change relating to DPPs and REITs with the Commission in February 1997 (''1997 Proposal'').[12] Among other things, the 1997 Proposal required a general securities member that provided individual valuations for illiquid DPP or REIT securities on its retirement account statements to provide the same valuation to other customers owning those securities. The Commission published the 1997 Proposal for comment in the **Federal Register** on April 3, 1997,[13] and received nine comment letters regarding the proposal.

According to NASD Regulation, concerns arose regarding potential conflicts between the requirements of the 1997 Proposal and the obligations of a member acting as a retirement account fiduciary under Employee Retirement Income Securities Act and Internal Revenue Service regulations. Therefore, NASD Regulation withdrew the 1997 Proposal and replaced it with the current proposal.[14]

C. NASD–00–13

In the current proposal, NASD Regulation proposes to amend its rules to require general securities members to list valuations for DPP and REIT securities on customer account statements under certain circumstances.[15]

1. Definitions

The proposal will apply to DPP and REIT securities sold in a public offering. The definitions of DPP and REIT in NASD Rule 2340 will exclude securities listed on a national securities exchange or Nasdaq, as well as securities that are in a depository and settle regular way. NASD Regulation believes that the excluded securities are more likely to trade regularly and, accordingly, that investors will have ready access to current market value information. The definition of DPP in NASD Rule 2340 also will exclude any program registered as a commodity pool because those programs generally offer investors a security that is redeemable by the issuer at the customer's option at regular intervals and at ascertainable values.

2. Voluntary Estimated Value

NASD Rule 2340(b)(1)(A) allows a general securities member to provide a per share estimated value for a DPP or REIT on an account statement if the member satisfies the conditions of NASD Rules 2340(b)(2) and (b)(3).

3. Mandatory Estimated Value

NASD Rule 2340(b)(1)(B) requires a general securities member to include in a customer's account statement an estimated value of a DPP or REIT from an annual report,[16] an independent valuation service, or any other source if: (1) The annual report of a DPP or REIT held in a customer's account or included on the customer's account statement includes a per share estimated value; and (2) the conditions of NASD Rules 2340(b)(2) and (b)(3) are satisfied. NASD Regulation notes that although the inclusion of the estimated value in the issuer's annual report triggers the member's obligation to provide a valuation on the customer's account statement, the estimated value included on the account statement could be obtained from the annual report, an independent valuation service or another source, *e.g.,* an estimated value generated by the member. The estimated value must be included in the first customer account statement issued after the annual report is available.

4. Reliability of Estimated Values

NASD Rule 2340(b)(2) requires that an estimated value be developed from data that is as of a date no more than 18 months prior to the date that the statement is issued. NASD Regulation believes that the 18-month standard provides sufficient time for the member and for an independent valuation source to develop an estimated value for DPP and REIT securities based on the audited financial statements contained in the Form 10–K of the DPP or REIT. For example, an estimated value based on December 31, 1999, financial statements could be used from January 1, 2000, through June 30, 2001, thereby allowing time between April and June 2001 for a new estimated value to be developed based on the December 31, 2000, financial statements.

[7] A general securities member is any member that conducts a general securities business and is required to calculate its net capital pursuant to the provisions Rule 15c3–1(a) under the Act, except for paragraphs (a)(2) and (a)(3). *See* NASD Rule 2340(c).

[8] *See* Letter from Edward J. Markey, Chairman, and Jack Fields, Ranking Republican Member, Subcommittee on Telecommunications and Finance, U.S. House of Representatives, to Joseph R. Hardiman, President and Chief Executive Officer, NASD, dated March 9, 1994 (''1994 Letter'').

[9] *See* 1994 Letter, *supra* note 10.

[10] *See* Letter from Brandon Becker, Director, Division, Commission, to Richard G. Ketchum, Executive Vice President and Chief Operating Officer, NASD, dated June 14, 1994 (''Limited Partnership Letter'').

[11] *See* Limited Partnership Letter, *supra* note 10.

[12] *See* File No. SR–NASD–97–12.

[13] *See* Securities Exchange Act Release No. 38451 (March 27, 1997), 62 FR 15945.

[14] *See* Letter from Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated March 27, 2000.

[15] Under the proposal, a DPP or DPP security refers to the publicly issued equity security of a DPP as defined in NASD Rule 2810 (including limited liability companies), but does not include securities on deposit in a registered security depository and settled regular way, securities listed on a national securities exchange or The Nasdaq Stock Market (''Nasdaq''), or a program registered as a commodity pool with the Commodity Futures Trading Commission. The proposal defines a REIT or REIT security to include the publicly issued equity securities of a REIT as defined in Section 856 of the Internal Revenue Code, but not REIT equity securities on deposit in a registered securities depository and settled regular way or REIT equity securities listed on a national securities exchange or Nasdaq. *See* NASD Rules 2340(c)(3) and (c)(4).

[16] NASD Rule 2340(c)(5) defines annual report to mean the most recent annual report of the DPP or REIT distributed to investors pursuant to Section 13(a) of the Act.

NASD Rule 2340(b)(4), as proposed in Amendment No. 1 and revised in Amendment No. 2, prohibits a member from including a per share estimated value for a DPP or REIT security on an account statement if the member can demonstrate that the value was inaccurate as of the date of the valuation or is no longer accurate as a result of a material change in the operations or assets of the program or trust.[17]

5. Required Disclosures

NASD Rule 2340(b)(3) requries an account statement that provides an estimated value for a DPP or REIT security to include: (1) a brief description of the estimated value, its source, and the method by which it was developed; and (2) disclosure that DPP or REIT securities are generally illiquid, and that the estimated value may not be realized when the investor seeks to liquidate the security.

NASD Rule 2340(b)(5) requires an account statement that does not provide an estimated value for a DPP or REIT security to include disclosure that: (1) DPP or REIT securities are generally illiquid; (2) the value of the security will be different from its purchase price; and (3) if applicable, that accurate valuation information is not available.

6. NASD Rule 2710 and 2810

NASD Regulation believes that the amendments to NASD Rule 2710, ''Corporate Financing Rule—Underwriting Terms and Arrangements,'' and NASD Rule 2810, ''Direct Participation Programs,'' will help to ensure that DPP general partners or sponsors and REIT trustees provide estimated per share values in their annual reports. NASD Rule 2710(c)(6), as amended, states that, when proposed in connection with the distribution of a public offering of securities, it shall be unfair and unreasonable for a member or associated person to participate in a public offering of REIT securities unless the trustee will disclose in each annual report distributed to investors pursuant to Section 13(a) of the Act a per share estimated value of the trust securities, the method by which it was developed, and the date of the data used to develop the estimated value.

New NASD rule 2810(b)(5) prohibits a member from participating in a public offering of DPP securities unless the general partner or sponsor of the program will disclose in each annual report distributed to investors pursuant to Section 13(a) of the Act a per share estimated value of the DPP securities, the method by which it was developed, and the date of the data used to develop the estimated value.

D. Amendment Nos. 1 and 2

As discussed more fully below, one commenter, Merrill Lynch, expressed concern that NASD Rule 2340(b)(2)(A) would have required members to make an affirmative determination about the reliability of estimated values provided through an annual report of a DPP or REIT, by an independent valuation service, or through any other source.[18] NASD Regulation responded to concerns raised by Merrill Lynch, and the issues raised by the other commenters, in Amendment No. 1. Among other things, Amendment No. 1 deletes NASD Rule 2340(b)(2)(A) and adopts NASD Rule 2340(b)(4), which stated that, notwithstanding the requirement in NASD Rule 2340(b)(1)(B), a member may refrain from including a per share estimated value for a DPP or REIT security on an account statement if the member can demonstrate that the value was inaccurate as of the date of the valuation or is no longer accurate as a result of a material change in the operations or assets of the program or trust. NASD Regulation also noted that NASD Rule 2340(b)(2)(A) was not intended to impose an obligation on members to guarantee the accuracy of an estimated value obtained from a third-party source.[19]

In Amendment No. 2, NASD Regulation revised NASD Rule 2340(b)(4) to prohibit a member from including an estimated per share value for a DPP or REIT security on an account statement if the member can demonstrate that the value was inaccurate as of the date of the valuation or is no longer accurate as a result of a material change in the operations or assets of the program or trust. According to NASD Regulation, the amended rule language is intended to clarify that a member is obligated to refrain from using an estimated per share value on customer account statements if the member can demonstrate that the estimated value is inaccurate.[20] NASD Regulation noted that the provision does not relieve a member of its obligation to provide an alternative per share estimated value when the member's obligation is triggered by NASD Rule 2340(b)(1)(B).[21]

E. Implementation of the Proposed Rule Change

To provide members and their service organizations with sufficient time to modify their computer systems to comply with the proposed rule change, the NASD has requested that the proposed rule change become effective three months after notifying its members of Commission approval of the proposal.[22] Following the Commission's approval of the proposal, the NASD will issue a Notice to Members announcing Commission approval of the proposed rule change and the anticipated effective date of the proposal.

III. Comments Received

The Commission received five comment letters from four commenters regarding the proposal.[23] Three commenters supported the proposal but recommended that NASD Regulation revise the proposal to require members to provide valuation information if a general partner makes an 8–K or 10–Q filing subsequent to the release of an annual report.[24] Another commenter, Merrill Lunch, expressed concern that proposed NASD Rule 2340(b)(2)(A) would have required a member to make an affirmative determination regarding the reliability of each estimated value provided to a member through an annual report of the DPP or REIT, by an independent valuation service, or by any other source.[25]

Specifically, Merrill Lynch asserted that NASD Rule 2340(b)(2)(A) would impose an unfair obligation on a member to consider the accuracy of an estimated valuation, even if the member had obtained the estimated value from the DPP or REIT's annual report or from an independent valuation service that the member had retained to provide a valuation. Merrill Lynch recommended that NASD Regulation amend NASD Rule 2340(b)(2)(A) to include a provision from the 1997 Proposal that would prohibit a member from including on an account statement ''an estimated value that the member believes is inaccurate as of the date of

[17] *See* Amendment Nos. 1 and 2, *supra* notes 3 and 4.

[18] *See* Merrill Lunch II, *supra* note 6. Proposed NASD Rule 2340 (b)(2)(A) permitted a member to provide a per share estimated value for a DPP or REIT on a customer account statement if ''after considering any relevant information about the market and the particular investment in its possession, the member has no reason to believe that the estimated valuation is inaccurate.''

[19] *See* Amendment No. 1 *supra* note 3.

[20] *See* Amendment No. 2 *supra* note 4.

[21] *See* Amendment No. 2 *supra* note 4.

[22] Telephone conversation among Suzanne Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, and Katherine A. England, Assistant Director, Division, Commission, and Yvonne Fraticelli, Special Counsel Division, Commission on November 20, 2000 (''November 20 Conversation'').

[23] *See* note 6, *supra.*

[24] *See* IPA Letter, CNL Letter, and Resourcephoenix.com Letter, *supra* note 6.

[25] *See* Merrill Lynch II, *supra* note 6.

the valuation or is no longer accurate as a result of a material change in the operations or assets of the program or trust.'' [26] Merrill Lynch believed that the revised language would prohibit a member from providing an estimated valuation that the member believes is inaccurate without imposing an affirmative duty on the member to determine that it has no reason to believe that the estimated value is inaccurate.[27]

The IPA supported the proposal but expressed concern that some firms might omit valuation information from customer account statements by arguing that an action of an investment program since the date of an annual report, such as a purchase or sale, made the valuation information in the annual report inaccurate.[28] To prevent the omission of valuation information under those circumstances, the IPA recommended that the NASD amend the proposal to require members to include on customer account statements any estimated value published by the general partner in an 8–K or 10–Q filing made subsequent to the release of the annual report.[29] CNL and Resourcephoenix.com supported the IPA's position.[30]

IV. Discussion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[31] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 15A(b)(6) of the Act which provides, among other things, that the rules of a national securities association must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[32]

A. Definitions

The Commission finds that the proposed definitions of DPP and REIT in NASD Rule 2340(c) will facilitate compliance with the proposal by clearly identifying the DPP and REIT securities that are subject to the proposal. As noted above, the proposal will apply to DPP and REIT securities sold in a public offering and will exclude: (1) DPP and REIT securities listed on a national securities exchange or Nasdaq; (2) DPP and REIT securities that are in a depository and settle regular way; and (3) any DPP program registered as a commodity pool. According to NASD Regulation, DPP and REIT securities listed on a national securities exchange or Nasdaq and DPP and REIT securities that are in a depository and settle regular way are more likely to trade regularly and investors should have ready access to current market value information concerning those securities. Similarly, NASD Regulation noted that a DPP program registered as a commodity pool generally offers investors a security that is redeemable by the issuer at the customer's option at ascertainable values.

The Commission believes that the proposed definitions of DPP and REIT are consistent with the concerns raised in the 1994 Letter regarding the adequacy of ongoing valuation disclosures for non-publicly traded partnership securities. Because the 1994 Letter expressed concern with regard to the availability of valuation information for non-publicly traded partnership securities, the Commission believes that it is reasonable for NASD Regulation to exclude from the proposal those DPPs and REITs for which current valuation information is available.

The Commission believes that the proposal to define an ''annual report'' as the most recent annual report of the DPP or REIT distributed to investors pursuant to Section 13(a) of the Act is reasonable and will help to clarify the application of the rule.

B. Voluntary Estimated Value

NASD Rule 2340(b)(1)(A) allows a general securities member to provide a per share estimated value for a DPP or REIT on an account statement if the member satisfies the conditions of NASD Rules 2340(b)(2) and (b)(3). The Commission believes that NASD Rule 2340(b)(1)(A) will protect investors and public interest by ensuring that DPP and REIT valuations provided voluntarily in customer account statements are subject to the same requirements and disclosures as the mandatory DPP and REIT valuations required under NASD Rule 2340(b)(1)(B). The Commission believes that it is reasonable to provide identical treatment for DPP and REIT valuations provided voluntarily in customer account statements and for DPP and REIT valuations provided in customer account statements to comply with the requirements of NASD rule 2340(b)(1)(B).

C. Mandatory Estimated Value

NASD Rule 2340(b)(1)(B) requires a general securities member to include in a customer account statement an estimated value of a DPP or REIT from an annual report, an independent valuation service, or any other source if: (1) The annual report of a DPP or REIT held in a customer's account or included on the customer's account statement includes a per share estimated value; and (2) the conditions of NASD Rules 2340(b)(2) and 2340(b)(3) are satisfied. The Commission believes that NASD Rule 2340(b)(1)(B) will protect investors and the public interest by requiring members to provide DPP and REIT valuation information on customer account statements under the circumstances specified in NASD Rule 2340(b)(1)(B). By providing investors with valuation information for their DPP or REIT investments, the Commission believes that NASD Rule 2340(b)(1)(B) will help to address the concerns raised in the 1994 Letter regarding the availability of valuation information for non-traded partnerships.

D. Reliability of Estimated Values

NASD Rule 2340(b)(2) allows a member to include a per share estimated value for a DPP or REIT on an account statement only if the estimated value has been developed from data that is as of a date no more than 18 months prior to the date that the statement is issued. The Commission believes that NASD Rule 2340(b)(2) will help to ensure the reliability of estimated valuations provided on customer account statements by requiring the valuations to be based on relatively recent data. In addition, as NASD Regulation noted in its proposal, the 18-month period should provide a member or an independent valuation source with sufficient time to develop a new valuation based on the audited financial statements provided in a DPP or REIT's most recent Form 10–K.

In Amendment No. 1 NASD Regulation addressed Merrill Lynch's concern that proposed NASD Rule 2340(b)(2)(A) would have imposed on broker-dealers an obligation to consider the accuracy of an estimated valuation obtained from an annual report of a DPP or REIT or from an independent valuation service retained by the member to provide a valuation. Specifically, Amendment No. 1 deleted proposed NASD Rule 2340(b)(2)(A) and adopted NASD Rule 2340(b)(4), which, as revised in Amendment No. 2,

[26] *See* Merrill Lynch II, *supra* note 6.

[27] *See* Merrill Lynch II, *supra* note 6.

[28] *See* IPA Letter, *supra* note 6.

[29] *See* IPA Letter, *supra* note 6.

[30] *See* CNL Letter Resourcephoenix.com Letter, *supra* note 6.

[31] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78o–3(b)(8).

[32] 15 U.S.C. 78o–3(b)(6).

prohibits a member from including a per share estimated value for a DPP or REIT security on an account statement if the member can demonstrate that the value was inaccurate as of the date of the valuation or is no longer accurate as a result of a material change in the operations or assets of the program or trust.[33]

In Amendment No. 1 NASD Regulation also responded to the concerns of the IPA and other commenters, who believed that a broker-dealer might omit an estimated valuation from an account statement by asserting that a change in an investment program since the date of an annual report made the valuation information in the annual report inaccurate.[34] To address this concern, the IPA recommended that NASD Regulation require broker-dealers to include on customer account statements any estimated value published by the general partner or trustee in an 8–K or 10–Q filing subsequent to the release of the annual report.[35]

In response, NASD Regulation stated that it did not believe that members would be able to rely inappropriately on NASD Rule 2340(b)(4) to omit estimated valuations from customer account statements. In this regard, NASD Regulation noted that once the publication of an estimated value in a DPP or REIT's annual report triggers a broker-dealer's obligation to provide a valuation on a customer account statement, the member must include on the customer account statement either the value published in the annual report, a value obtained from another third-party source, or a value developed by the member.[36] Thus, NASD Regulation concluded that a member would be required to develop a valuation to include on a customer account statement if the member determined that the values available from the annual report and third-party sources were inaccurate.[37]

The Commission believes that NASD Rule 2340(b)(4) will protect investors and the public interest by helping to ensure the reliability of valuation information provided on customer account statements. Specifically, by prohibiting a broker-dealer from including a per share estimated value for a DPP or REIT if the broker-dealer can demonstrate that the value was inaccurate as of the date of the valuation or is no longer accurate, NASD Rule 2340(b)(4) will help to prevent the dissemination of inaccurate valuation information.[38] In addition, the Commission notes that once an estimated valuation in a DPP or REIT's annual report triggers a member's obligation under NASD Rule 2340(b)(1)(B) to provide a valuation on customer account statements, the member must provide an alternative valuation obtained from a third-party source or developed by the member if the member demonstrates that the valuation provided in the annual report is inaccurate. If the member determines that values available from the annual report and from third-party sources are inaccurate, then the member would be required to develop a valuation to include on customer account statements.[39] Accordingly, the Commission believes that members will not be able to use NASD Rule 2340(b)(4) to avoid providing valuation information when a valuation is required under NASD Rule 2340(b)(1)(B).

E. Required Disclosures

NASD Rule 2340(b)(3) requires an account statement that provides an estimated value for a DPP or REIT to include: (1) A brief description of the estimated value, its source, and the method by which it was developed; and (2) disclosure that DPP or REIT securities are generally illiquid and that the estimated value may not be realized when the investor seeks to liquidate the security. The Commission notes that the disclosures required by NASD Rule 2340(b)(3) are consistent with the disclosures discussed in the Division's Limited Partnership Letter.[40] The Commission believes that a description of the estimated value provided on an account statement, its source, and the method by which it was developed will provide investors with useful information regarding the estimated valuation and may help them to assess the accuracy of the estimated valuation. In addition, the Commission believes that the disclosure that DPP or REIT securities are generally illiquid and that the estimated value may not be realized when the investor seeks to liquidate the security will provide investors with an important reminder concerning the market for DPP and REIT securities and the potential for realizing the estimated value of their DPP or REIT upon liquidation of the security.[41]

NASD Rule 2340(b)(5) requires an account statement that does not provide an estimated value for a DPP or REIT security an account statement that does not provide an estimated value for a DPP or REIT security to include disclosure that: (1) DPP or REIT securities are generally illiquid; (2) the value of the security will be different from its purchase price; and (3) if applicable, that accurate valuation information is not available. The Commission believes that the disclosure required in NASD Rule 2340(b)(5) will provide investors with important information concerning the market for DPP and REIT securities, the difference between the purchase price and the current value of their security, and the availability of valuation information.

F. NASD rules 2710 and 2810

NASD Regulation proposes to amend NASD rule 2710(c)96) to provide that, when proposed in connection with the distribution of a public offering of securities, it shall be unfair and unreasonable for a member or associated person to participate in a public offering of REIT securities unless the trustee will disclose in each annual report distributed to investors pursuant to Section 13(a) of the Act a per share estimated value of the trust securities, the method by which it was developed, and the date of the data used to develop the estimated value.

NASD Regulation proposes to amend NASD Rule 2810(b) to prohibit a member from participating in a public offering of DPP securities unless the general partner or sponsor of the program will disclose in each annual report distributed to investors pursuant to Section 13(a) of the Act a per share estimated value of the DPP securities, the method by which it was developed, and the date of the data used to develop the estimated value.

The Commission believes that the amendments to NASD Rules 2710 and 2810 will encourage general partners and sponsors of DPPs and REIT trustees to provide estimated per share values in their annual reports, thereby helping to address the concerns raised in the 1994 Letter regarding ongoing disclosures of the values of non-traded partnership

[33] *See* Amendment Nos. 1 and 2, *supra* notes 3 and 4.

[34] *See* IPA Letter, *supra* note 6. *See also* CNL Letter and Resourcephoenix.com Letter, *supra* note 6.

[35] *See* IPA Letter, *supra* note 6.

[36] *See* Amendment No. 1, *supra* note 3. Similarly, NASD Regulation noted in Amendment No. 2 that NASD Rule 2340(b)(4) does not relieve a member of its obligation to provide an alternative per share estimated value when NASD Rule 2340(b)(1)(B) triggers the member's obligation.

[37] *See* Amendment No. 1, *supra* note 3.

[38] However, a member is not obligated to confirm the accuracy of an estimated valuation provided in a DPP or REIT's annual report. Conversation between Suzanne Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, and Yvonne Fraticelli, Special Counsel, Division, Commission, on November 9, 2000.

[39] *See* Amendment No. 1, *supra* note 3.

[40] *See* note 10, *supra*.

[41] *See* NASD Rule 2810.

securities. The Commission finds that the proposed amendments to NASD Rules 2710 and 2810 will protect investors and the public interest by helping to ensure that investors in DPPs and REITs that are sold in a public offering receive ongoing valuation information concerning their investments.

G. Implementation of the Proposed Rule Change

The NASD has requested that the proposed rule change become effective three months after the NASD notifies its members of Commission approval of the proposal.[42] The Commission believes that the proposed period for implementing the proposal will provide NASD members and service organizations with time to modify their computer systems to comply with the proposal, thereby helping to ensure that NASD members are adequately prepared to implement the proposed changes.

H. Accelerated Approval of Amendment Nos. 1 and 2

The Commission finds good cause for approving Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 clarifies that an NASD member is not obligated to guarantee the accuracy of an estimated value obtained from a third-party source. Amendment No. 2 strengthens the proposal by prohibiting a member from using an estimated valuation on a customer account statement if the member can demonstrate that the value was inaccurate as of the date of the valuation or is no longer accurate. Accordingly, the Commission finds that it is consistent with Sections 15A(b)(5) and 19(b) of the Act to approve Amendment Nos. 1 and 2 on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendments Nos. 1 and 2, including whether Amendment Nos. 1 and 2 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–13 and should be submitted by December 20, 2000.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[43] that the proposed rule change (File No. SR–NASD–00–13), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[44]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30374 Filed 11–28–00; 8:45 am]

BILLING CODE 8010–01–M

[42] *See* November 20 Conversation, *supra* note 22.

[43] 15 U.S.C. 78s(b)(2).

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43616; File No. SR–NASD–99–65]

Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 2 and 3 to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Creation of a Corporate Bond Trade Reporting and Transaction Dissemination Facility and the Elimination of Nasdaq's Fixed Income Pricing System

November 24, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 17, 2000 and November 22, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') Amendment Nos. 2 and 3 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The proposed rule change was published for comment in the **Federal Register** on December 10, 1999.[3] The Commission is publishing this notice to solicit comments on Amendment Nos. 2 and 3 to the proposed rule change from interested persons.[4]

Amendment No. 2 reflects certain changes proposed by the commenters in response to the proposed rule change, as originally noticed, or changes suggested by the NASD staff after additional review. Amendment No. 3 sets forth the statutory basis of the proposed rule change. For convenience, the proposed NASD Rules in Amendment No. 2 are referred to as the TRACE Rules, in reference to the proposed facility, which is currently referred to as the Trade Reporting and Comparison Entry Service (TRACE).[5]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes the following amendments to the rule text (as originally proposed) in response to comment letters or suggestions by the NASD staff after additional review. Proposed additions are italicized; proposed deletions are in brackets.

* * * * *

6200. Trade Reporting and Comparison Entry Service (TRACE)

6210. Definitions

The terms used in this [paragraph] *Rule 6200 Series* shall have the same meaning as those defined in the Association's By-Laws and Rules unless otherwise specified.

(a) The term [''TRACE eligible Security''] ''*TRACE-eligible security*'' shall mean all United States dollar denominated debt securities that are registered with the Securities and Exchange Commission and issued by United States and/or foreign private corporations and that are depository eligible securities as defined in Rule 11310(d); all debt securities qualified as PORTAL securities pursuant to *the* Rule 5000 Series; all investment-grade rated debt securities that are issued pursuant to Section 4(2) of the Securities Act of 1933 and that are depository eligible securities pursuant to Rule 11310(d).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42201 (Dec. 3, 1999), 64 FR 69305.

[4] The NASD previously submitted Amendment No. 1 to reflect the Association's receipt of written comments from the Regional Municipal Operations Association. After consultation with the Commission staff, the NASD withdrew Amendment No. 1 and has incorporated RMOA's comments and the NASD's response in Amendment No. 2. As explained in the original proposal, the NASD represents that it will file a separate proposal to establish appropriate fees and charges for TRACE prior to implementation.

[5] The NASD represents that it will rename TRACE. When a new name is selected, the NASD will amend the TRACE Rules prior to implementation of the service to reflect that name change.

(b) The term ''Trade Reporting And Comparison Entry Service'' or ''TRACE'' shall mean the automated system owned and operated by the *the NASD* [The Nasdaq Stock Market, Inc.] that, among other things, accommodates reporting[, comparison,] and dissemination of transaction reports where applicable in TRACE-*eligible securities* [Securities] and which may submit ''locked-in'' trades to National Securities Clearing Corporation for clearance and settlement and provide participants with monitoring and risk management capabilities to facilitate a ''locked-in'' trading environment.

(c) The term ''reportable TRACE transaction'' shall mean [all] *any* transaction[s] in a TRACE-*eligible security* [Eligible Security as required by this rule].

(d) The term ''time of execution'' for a transaction in a TRACE-eligible security shall be the time when *the parties agree to* all of the terms of the transaction [are agreed to which] *that* are insufficient to calculate the dollar price of the trade. The time of execution for transactions involving TRACE-eligible securities that are trading ''when issued'' on a yield basis shall be when the yield for the transaction has been agreed to by the parties.

(e) The term [''Parties to the Transaction''] ''*parties to the transaction*'' shall mean the executing broker/dealer, introducing broker/dealer, and clearing brokers, if any.

(f) The term ''TRACE Participant'' shall mean any NASD member [in good standing] that uses the TRACE system.

[(g) The term ''TRACE Reporting Party'' shall mean a member of the Association that is registered as a TRACE participant with the Association and obligated to report a TRACE transaction pursuant to TRACE system rules and who is member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.]

[(h) The term ''TRACE Non-Reporting Party'' shall mean a member of the Association that is registered as a TRACE participant with the Association who is not obligated to report under TRACE system rules for a particular transaction to which it is a party and who is member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member. It shall also mean any customer who is not a member of the Association.]

[(i) The term ''Clearing Broker/Dealer'' or ''Clearing Broker'' shall mean the member firm that has been identified in the TRACE system as principal for clearing and settling a trade, whether for its own account or for a correspondent firm.]

[(j) The term ''Correspondent Executing Broker/Dealer'' or ''Correspondent Executing Broker'' shall mean the member firm that has been identified in the TRACE system as having a correspondent relationship with a clearing firm whereby it executes trades and the clearing function is the responsibility of the clearing firm.]

[(k)(*g*) The term [''Introducing Broker/Dealer'' or ''introducing broker''] ''*Introducing Broker*'' shall mean the member firm that has been identified in the TRACE system as a party to the transaction, but does not execute or clear trades.

[(l) The term ''Browse'' shall mean the functions of TRACE that permit a Participant to review (or query) for trades in the system identifying the Participant as a party to the transaction, subject to the specific uses contained in the TRACE Users Guide.]

[(m) The term ''Gross Dollar Thresholds'' in the risk management application of TRACE shall mean the daily dollar amounts for purchases and sales that a clearing broker establishes in the TRACE system for each correspondent executing broker that may be raised or lowered on an inter-day or intra-day basis. If the value of a correspondent's trades equals or exceeds the gross dollar thresholds, the system will alert the clearing broker.]

[(n) The term ''Pre-alert'' shall mean the alert notifying the correspondent executing broker and the clearing broker that the correspondent executing broker has equaled or exceeded 70% of the purchase or sale gross dollar limits established by the clearing broker. The Association reserves the right to modify the percentage of the pre-alert as necessary and upon prior notification to the TRACE Participants.]

[(o) The term ''Single Trade Limit'' shall mean the dollar amount established by the Clearing Broker for a single trade that enables a TRACE clearing firm to review the trade before it is obligated to clear the trade. When a correspondent executing broker negotiates a trade that equals or exceeds the Single Trade Limit, its clearing broker shall have a period of thirty (30) minutes to review and agree to decline to act as principal for clearing that trade. If a Clearing Broker fails to set a single trade limit the TRACE system will automatically set a default single trade limit of $0 for the Correspondent Broker. The Association reserves the right to modify the minimum/maximum dollar amount of the Single Trade Limit as well as the time frame for clearing broker review as necessary and upon prior notification to the TRACE Participants.]

[(p)] (*h*) [For purposes of these rules, the] *The* term ''Investment Grade'' shall mean any TRACE-eligible security rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories.

[(q)] *(i)* [For purposes of these rules, the] *The* term ''Non-Investment Grade'' shall mean any TRACE-eligible security that is unrated, non-rated, split-rated (where one rating falls below investment grade), or does not meet the definition of [investment grade] *Investment Grade* in paragraph [(p)] *(h)*[,] above.

6220. Participation in TRACE

(a) Mandatory *Member* Participation [for Clearing Agency Members]

(1) Pursuant to Article VII, Section 1(a)(vi) and (vii) of the By-Laws, participation in TRACE is mandatory for all brokers/dealers that are members of a clearing agency registered with the Commission pursuant to Section 17A of the Act, and for all brokers that have a clearing arrangement with such a broker. Such participation shall include the reconciliation of all over the counter clearing agency eligible transactions involving TRACE securities.] *Member participation in TRACE for trade reporting purposes is mandatory. Such mandatory participation obligates members to submit transaction reports in TRACE-eligible securities in conformity with the Rule 6200 Series.*

(2) Participation in TRACE shall be conditioned upon the TRACE Participant's initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, a TRACE Participant Application Agreement and all applicable rules and operating procedures of the Association and the Commission; *and*

[(B) membership in, or maintenance of, an effective clearing arrangement with a member of a clearing agency registered pursuant to the Act;]

[(C)] *(B)* maintenance of the physical security of the equipment located on the premises of the TRACE Participant to prevent unauthorized entry of information into TRACE.[; and]

[(D) acceptance and settlement of each trade that TRACE identifies has having been effected by such TRACE Participant, or if settlement is to be made through a clearing member, guarantee the acceptance and settlement of each TRACE identified trade by the clearing member on the regularly scheduled settlement date.]

[(3) Participation in TRACE as a Clearing Broker shall be conditioned upon the Clearing Broker's initial and continuing compliance with the following requirements:]

[(A) execution of, and continuing compliance with, a TRACE Participant Application Agreement and all applicable rules and operating procedures of the Association and the Commission;]

[(B) membership in a clearing agency registered pursuant to the Act;]

[(C) maintenance of the physical security of the equipment located on the premises of the TRACE Clearing Broker to prevent the unauthorized entry of information into TRACE; and]

[(D) acceptance and settlement of each trade that TRACE identifies as having been effected by itself or any of its correspondents on the regularly scheduled settlement date.]

[(4)] *(3)* Each TRACE Participant shall be obligated to inform the Association of non-compliance with, or changes to, any of the participation requirements set forth above.

(b) Participant Obligations in TRACE

(1) Access to TRACE

Upon execution and receipt by the Association of the TRACE Participant Application Agreement, a TRACE Participant may commence input and validation of trade information in TRACE-eligible securities. TRACE Participants may access the service via an NASD-approved facility during the hours of operation.

(2) Clearing Obligations

If at any time a TRACE Participant fails to maintain a clearing arrangement, it shall be removed from the TRACE system until such time as a clearing arrangement is reestablished and notice of such arrangement is provided to the Association. If, however, the Association finds that the TRACE Participant's failure to maintain a clearing arrangement is voluntary, the withdrawal will be considered voluntary and unexcused. *This section shall not apply to TRACE Participants whose trading activity obviates the need for maintaining a clearing relationship.*

[(3) Clearing Broker Obligations]

[(A) Clearing brokers may cease to act as principal for a correspondent executing broker at any time provided that notification has been given to, received and acknowledged by the TRACE Operations Center and affirmative action has been completed by the Center to remove the correspondent broker from TRACE. The clearing broker's obligation to accept and clear trades for its correspondents shall not cease prior to the completion of all of the steps detailed in this subparagraph (3).]

[(B) TRACE Clearing brokers shall establish for each correspondent executing broker daily Gross Dollar Thresholds and may raise or lower the thresholds on an inter-day or intra-day basis. TRACE clearing brokers will receive a system alert when a correspondent executing broker equals or exceeds its gross dollar thresholds and will also receive a system pre-alert when a correspondent executing broker equals or exceeds 70% of the daily thresholds.]

[(C) For trades effected by a correspondent executing broker that equal or exceed the correspondent's Single Trade Limit set by the clearing broker in TRACE, clearing brokers have 30 minutes from the time of trade report input to TRACE to review the trade and accept or decline to act as principal to the trade. If the clearing broker does not make an affirmative acceptance or declination of the trade report within 30 minutes, the trade report will be subject to normal TRACE processing and the clearing broker will be obligated to act as principal for the trade.]

6230. Transaction Reporting

(a) When and How Transactions Are Reported

(1)(*A*) [All NASD members] *Members that are required to report transaction information pursuant to paragraph (b) below* shall, within 1 hour after trade execution, transmit through TRACE during system hours, or if TRACE is unavailable due to system or transmission failure, by telephone to the TRACE Operations Center, reports of transactions in TRACE-*eligible securities* [Securities] executed between 8:00 a.m. and 6:30 p.m. Eastern Time [or shall utilize the Browse function in TRACE to accept or decline trades within 30 minutes after execution according to paragraph (b) of this rule]. Transactions not reported within 1 hour after execution shall be designated as late*; provided, however, that if* [unless] inadequate time remains prior to system close to allow a timely report[. In this situation], the *member may* report [must be made] *the transaction* the next day at system open as designated ''as/of.''

(B) Members have an ongoing obligation to report transaction information promptly, accurately, and completely. The member may employ an agent for the purpose of submitting transaction information; however, the primary responsibility for the timely, accurate, and complete reporting of TRACE information remains the nondelegable duty of the member obligated to report the transaction.

(2) Transaction Reporting Between 6:30 p.m. and 8:00 a.m. Eastern Time

(A) Reports of transactions in TRACE-*eligible securities* [Securities] executed after 6:30 p.m. Eastern Time and before 12:00 a.m. Eastern Time shall be reported on the next day and be designed ''as/of.''[.] Such trade reports will not be included in daily market aggregates and will *be* disseminated beginning at 8:00 a.m. Eastern Time on the day of receipt.

(B) Report of transaction in TRACE-*eligible securities* [Securities] executed after 12:00 a.m. Eastern Time and before 8:00 a.m. Eastern Time shall be reported that same day beginning at 8:00 a.m. Eastern Time[.] within the maximum time frame mandated. Such trade reports will be included in that day's market aggregates and disseminated upon receipt.

[A pattern or practice of late reporting without exceptional circumstances may be considered inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110.]

(b) Which Party Reports Transaction

[Both parties executing a transaction shall, subject to the input requirements below, either input trade reports into the TRACE system or utilize the Browse feature to accept or decline a trade within the applicable time frames as specified in paragraph (a)(1) of this Rule.] Trade data input obligations are as follows:

(1) [in] *In* transactions between two [TRACE Participants] *members*, the member representing the sell side shall submit a trade report to TRACE;

(2) [in] *In* transactions [between] *involving* a[n NASD] member and a non-member including a customer, the [NASD] member shall [be required to] submit a trade report to TRACE.

(c) Trade Information To Be Reported

Each TRACE trade report shall contain the following information:

(1) CUSIP number or NASD symbol;

(2) Number of bonds as required by paragraph (d) below;

(3) Price of the transaction as required by paragraph (d) below;

(4) A symbol indicating whether the transaction is a buy, sell or cross;

(5) Date of Trade Execution (as/of trades only);

(6) Contra-party's identifier;

(7) Capacity—Principal or Agent (with riskless principal reported as principal) as required by paragraph (d) below;

(8) Time of trade execution*;*
(9) Reporting side executing broker as ''give up'' (if any);
(10) Contra side [introducing broker] *Introducing Broker* in case of ''give up'' trade;
(11) Stated commission;
(12) Such trade modifiers as required by either: (a) the TRACE [System] Rules; and/or (b) the TRACE Users Guide[.]*; and*
(13) Yield as required by SEC Rule 10b–10.

(d) Procedures for Reporting Price, Capacity, Volume

(1) For agency and principal transactions, report the price, including the mark-up, mark-down or commission (commission entered separately). Do not include accrued interest.
(2) For agency and principal transactions, report the actual number of bonds traded. Baby bonds (those with a face value of less than $1,000) should be reported expressed as a decimal.
(3) *For in-house* [In house] cross transactions*, report* [should be reported] as follows: Agency cross—report once as an agency trade; Principal cross—report twice, once as an individual principal buy and once as an individual principal sell.

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be *required to be* reported:
(1) Transactions [which] *that* are part of a primary distribution by an issuer;
(2) Transactions made in reliance on Section 4(2) of the Securities Act of 1933;
(3) Transactions in listed securities that are both executed on, and reported to, a national securities exchange;
(4) Transactions where the buyer and the seller have agreed to trade at a price substantially unrelated to the current market for the TRACE-*eligible* security (*e.g.*, to allow the seller to make a gift).

(f) Compliance With Reporting Obligations

A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110.

Rule 6231. Reporting of Transaction Information Sent to Clearing Agency

(a) *When and How Transactions Are Reported*

Each NASD member shall submit to TRACE the same transaction information (for transactions in TRACE-eligible securities) that the member supplies to its registered clearing agency for clearance and settlement. Such information shall be submitted to TRACE by the time the member transmits the information to its registered clearing agency.

(b)[(b)]

(1) In transactions between two members, both the member representing the sell side and the member representing the buy side shall submit the transaction information specified in Paragraph (a) above to TRACE.
(2) In transactions involving a member and a non-member, including a customer, the member shall submit the transaction information specified in paragraph (a) above to TRACE.

[6240. TRACE Processing]

[Locked-in trades may be determined in the TRACE system by matching the trade information submitted by the reporting parties through one of the following methods:]

[(a) Trade by Trade Match]

[Both parties to the trade submit transaction data and the TRACE system performs an on-line match;]

[(b) Trade Acceptance]

[The TRACE reporting party enters its version of the trade into the system and the TRACE non-reporting contra party reviews the trade report and accepts or declines the trade. An acceptance results in a locked-in trade; a declined trade report is purged from the TRACE system at the end of trade date processing;]

[(c) Post Trade Date Processing]

[T+N entries may be submitted during system hours each business day. At the end of daily matching, all declined trade entries will be purged from the TRACE system. TRACE will not purge any open trade (*i.e.,* unmatched or unaccepted) at the end of its entry day, but will carry-over such trades to the next business day for continued comparison and reconciliation. TRACE will automatically lock in and submit to NSCC as such any carried-over T to T+21 (calendar day) trade if it remains open as of 2:30 p.m. on the next business day. TRACE will not automatically lock in T+22 (calendar day) or older open ''as-of'' trades that were carried-over from the previous business day; these will be purged by TRACE at the end of the carry-over day if they remain open. Members may re-submit these T+22 or older ''as-of'' trades as a comparison-only entry into TRACE on the next business day for continued comparison and reconciliation for up to one calendar year.]

[6250. TRACE Risk Management Functions]

[The TRACE system will provide the following risk management capabilities to clearing brokers:]

[(a) Trade File Scan]

[Clearing brokers will be able to scan the trading activities of their correspondent executing brokers through the TRACE system.]

[(b) Gross Dollar Threshold]

[Clearing brokers will be able to establish, on an inter-day or intra-day basis, gross dollar thresholds for purchases and sales for their correspondent executing brokers, and the TRACE system will alert the clearing broker and its correspondent if the correspondent's trading activity equals or exceeds either threshold.]

[(c) Gross Dollar Threshold Pre-Alert]

[In addition to the gross dollar threshold alert, the TRACE system will also alert the clearing broker and its correspondent when the correspondent's trading activity equals or exceeds 70% of either gross dollar threshold.]

[(d) On-line Review]

[Clearing brokers that access TRACE through a computer interface will be able to receive intra-day activity of their correspondents as it is reported.]

[(e) Single Trade Limit]

[Clearing brokers will have 30 minutes from trade report input to TRACE to review any single trade executed by their correspondent executing brokers that equals or exceeds an amount set by the clearing broker for that correspondent in order to decide to act as principal. If, however, the clearing broker does not affirmatively accept or decline the trade, at the end of 30 minutes, the system will subject the trade to normal TRACE processing and the clearing broker will be obligated to act as principal to clear the trade.]

[(f) Super Cap]

[The Super Cap will be set as an amount to be determined by the Clearing Broker, but in no event less than the gross dollar threshold. When a correspondent's Super Cap is reached, notice will be furnished to TRACE participants, and no trade in excess of an amount set by the clearing broker for that correspondent will be accepted for TRACE processing unless the clearing broker accepts the trade within 30 minutes of execution.]

[6260. Obligation to Honor Trades]

[If a TRACE Participant is reported by TRACE as a party to a trade that has been treated as locked-in and sent to NSCC, notwithstanding any other agreement to the contrary, that party shall be obligated to act as a principal to the trade and shall honor such trade on the scheduled settlement date.]

[6261. Compliance with TRACE Rules and Trade Reporting Requirements]

[Failure of an NASD member, or person associated with a member, to comply with any of the rules or requirements of TRACE, or failure of a member or associated person to comply with any of the transaction reporting requirements for TRACE-Eligible Securities may be considered conduct inconsistent with high standards of commercial honor and just and equitable principals of trade, in violation of Rule 2110.]

[6270] *6240.* Audit Trail Requirements

The data elements specified in Rule [6220(c)] *6230(c)* are critical to the Association's compilation of a transaction audit trail for regulatory purposes. As such, all member firms [utilizing] *using* the TRACE [Service] *service* have an ongoing obligation to input [6220(c)] *Rule 6230(c)* information accurately and completely.

[6280] *6250.* Termination of TRACE Service

The Association may, upon notice, terminate TRACE service to a [Participant] *member* in the event that a[[n] TRACE Participant] *member* fails to abide by any of the rules or operating procedures of the TRACE service or the Association, or fails to honor contractual agreements entered into with the Association or its subsidiaries, or fails to pay promptly for services rendered by the TRACE [Service] *service*

[6290] 6260. Dissemination of Corporate Bond Trade Information

[Trade reports entered into TRACE will be collected, processed and disseminated on a real-time basis between 8 a.m. and 6:30 p.m. Eastern Time.]

(a) The Association will disseminate transaction information immediately upon receipt of transaction reports between 8 a.m. and 6:30 p.m. Eastern Time relating to transactions in Investment Grade corporate bonds having an initial issuance size of $1 billion or greater.

(b) All trade reports *in TRACE-eligible securities approved for dissemination and* submitted to TRACE prior to 5:15 *p.m. Eastern Time* will be included in the calculation of market aggregates and last sale except 1)[.] trades reported on an ''as of'' basis, 2) ''when issued'' trades executed on a yield basis, or 3) trades in baby bonds with a par value of less than $1,000.

[6291] 6270. Lead Underwriter Information Obligation

In order to facilitate trade reporting of secondary transactions in TRACE-*eligible* securities, *the member that is* the lead underwriter of any newly[-]issued TRACE-*eligible* security shall provide to the TRADE Operations Center the CUSIP number of any debt issue no later than on the effective date of the offering.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1998, SEC Chairman Arthur Levitt, in recognition of the relative lack of transparency in the corporate debt market, called upon the NASD to do the following: (1) Adopt rules requiring NASD members to report all transactions in corporate bonds to the NASD and to develop systems to receive and distribute transaction prices on an immediate basis; (2) create a database of transactions in corporate bonds to enable regulators to take a proactive role in supervising the corporate debt market; and (3) create a surveillance program, in conjunction with the development of a database, to better detect fraud and foster investor confidence in the fairness of the corporate debt market. The NASD notes that after extensive consultation with industry professionals, it filed SR–NASD–99–65. The NASD also states that it consulted extensively with industry professionals again before filing Amendment Nos. 2 and 3.

TRACE has generated significant comment. The NASD has identified the following common areas in the comment letters: (a) TRACE ownership, operation, and governance; (b) the proposed comparison function; (c) collection and dissemination of data; (d) TRACE data; (e) implementation schedules; and (f) T + 1 clearance and settlement and straight-through-processing (STP) issues. These issues are addressed below. In addition, the NASD is proposing to add bond yield as a mandatory element of reporting, which is discussed as item (g) below.

a. TRACE Ownership, Operation and Governance

As noted above, at the request of the SEC, the NASD has proposed to create a system for the reporting, dissemination and surveillance of fixed income transactions. Many commenters expressed concern about, or requested further information regarding, the roles and responsibilities of NASD and Nasdaq in this initiative. In response to those concerns, the NASD states that it will take the following steps to clarify the roles of NASD, NASD Regulation, and Nasdaq:

(1) The NASD will amend proposed TRACE Rule 6210 to clarify that it is the owner and operator of the facility, TRACE, to collect information on fixed income transactions and to disseminate such information;

(2) The NASD will file an application with the SEC to become registered as a exclusive securities information processor (ESIP) under Section 11A of the Act;

(3) The NASD, with the approval of the NASD Board of Governors, will establish a body of rules and policies that will be the bases on which NASD staff will administer the reporting and dissemination facility and assure compliance with the TRACE Rules;

(4) NASD Regulation will aid the NASD in establishing appropriate regulatory rules and policies and in performing all the regulatory functions associated with TRACE; and

(5) Nasdaq will provide technology and operational support pursuant to a contractual arrangement.

The NASD believes that the structure outlined above is responsive to many of the concerns raised by commenters. The NASD, the sole self-regulatory organization (''SRO'') for the over-the-counter (OTC) markets, represents that it will exercise full ownership and operational control over the TRACE project, including day-to-day administration and the information collection process. The NASD states that it will become an ESIP under Section

11A of the Act, providing appropriate regulatory oversight by the SEC of the NASD's operations, administration, and fees. The NASD also represents that it will be able to employ Nasdaq as its vendor of information processing services. The NASD believes that this will allow it to take advantage of Nasdaq's prior experience, yet exercise appropriate regulatory and administrative control over the collection of the information, the fees charged, the selection of vendors, and other important administrative and regulatory matters. The NASD believes that this structure parallels the structure used by other registered ESIPs under Section 11A, such as the Consolidated Tape Association (CTA) and Options Price Reporting Authority (OPRA). For example, the NASD represents that CTA, for purposes of Networks A and B, and OPRA, for purposes of options information, obtain information processing services by agreement with SIAC, and do so without decreasing their control or ceding such control to SIAC.

Although ultimate statutory authority will reside with the NASD Board of Governors, to more fully incorporate bond market expertise into TRACE operations and decision-making, the NASD proposes to create a new committee, the Bond Transaction Reporting Committee (BTRC), to advise the NASD Board. BTRC would consist of 8 persons selected by the NASD Board. Four of the members will be recommended by the staff of the NASD, and the other four members will be recommended by the Bond Market Association (TBMA). Selections would not include current staff or officers of either the NASD or TBMA. Both the NASD and TBMA would commit to having their selections consist of a broad range of bond market participants and include public representation. BTRC would provide significant input to the NASD Board on issues related to the operation of TRACE, including future NASD proposals to phase in dissemination and the setting of fees for dissemination of real-time TRACE data to the public. In addition, BTRC will be tasked with reviewing the effects upon liquidity associated with the dissemination of fixed income transaction information. BTRC will make recommendations to the NASD Board concerning appropriate time frames for public dissemination of smaller, less-actively traded issues.

The NASD represents that the NASD Board will give significant weight to the advice and recommendations of the BTRC. The NASD represents, however, that the formation and operation of BTRC shall in no way limit or hinder the responsibility and ability of the NASD Board to make final decisions, as required in accordance with the statutory obligations and responsibility articulated in Section 15A of the Act and the NASD By-Laws. In addition, the NASD represents that its staff may continue to make independent recommendations or proposals to the NASD Board concerning bond market issues.

In addition to concern expressed by some commenters about the role of Nasdaq in the TRACE initiative, other commenters suggested that a super-utility, rather than the NASD or Nasdaq, be used to collect fixed income transaction information. Others suggested the creation of a new SRO or vesting that authority in the NSCC. Since the NASD is the SRO charged with regulating the OTC markets and 95% of corporate bond transactions occur in the OTC market, the NASD believes that it is the SRO most appropriately situated to undertake this regulatory initiative and to assure compliance with it. It believes that creating a super-utility or a new SRO would not be cost-effective, would result in regulatory duplication and duplicative fees to the industry, and would delay greatly the implementation of reporting and dissemination.

Finally, one set of commenters, consisting of a data vendor and securities exchange, urged the Commission to adopt a de-centralized, multiple SRO-collector and disseminator model for fixed income transaction reporting. These commenters assert that such a model would encourage innovation and competition among organizations for the collection, comparison and dissemination of corporate bond trade data. While the NASD agrees that competition is an important goal, the NASD believes that the Commission and Congress have long recognized that in the area of collection, consolidation, and dissemination of market data information, other factors, such as equality of access, reasonableness of fees, and sufficient system capacity and security, are equally important.

b. Trade Comparison

Some commenters expressed concern that the proposal would mandate that all corporate bond trade comparison take place within TRACE. Among other things, commenters objected to mandated comparison through TRACE because, they argued, it would result in Nasdaq having an exclusive franchise over the provision of comparison services for corporate bond trades.

The NASD believes that the proposal to require mandatory comparison through TRACE was intended to ensure that the corporate bond trade data reported to and disseminated by the NASD was as accurate as possible, as evidenced by the acceptance of the trade by both parties. In addition to the fact that the NASD, not Nasdaq, will own and control TRACE, to further alleviate concerns expressed by the commenters, the NASD proposes to delete the TRACE Rules regarding trade comparison. (The NASD also proposes to delete the risk management provisions contained in the initial proposal.) Although NASD plans to offer voluntary comparison services to NASD members, firms will be free to select other entities to compare their transactions in TRACE-eligible securities. The NASD represents that elimination of mandatory comparison through TRACE will provide an opportunity for other entities to offer competing value-added comparison services for fixed income transactions.

As a result of Amendment No. 2, both compared and un-compared corporate bond trade data will be disseminated by the NASD. The NASD represents that it will amend the proposal further to require TRACE participants, whether reporting or non-reporting members, to provide to the NASD the same data on TRACE-eligible securities transactions that is provided to the member's registered clearing agency, within the same time frame, and, to the extent possible, in the same format. (Proposed TRACE Rule 6231.) This requirement is in addition to a member's obligation, if any, to report a fixed income transaction on a real-time basis under proposed TRACE Rule 6230. The NASD believes that this will improve considerably the quality of the data for surveillance purposes, while imposing minimal additional burdens on the firms.

c. Collection and Dissemination of TRACE Data

The NASD originally proposed a reporting plan that began first with high yield and convertible debt securities, followed by an alphabetical phase-in of all other TRACE-eligible corporate bonds. The initial time frame proposed for reporting trades would be no later than 1 hour after trade execution, which subsequently would be reduced to 15 minutes. After a brief start-up period during which the NASD would conduct a data integrity review, all eligible trade reports received would thereafter be disseminated immediately, subject to TRACE's proposed limitations on reporting the actual size of large

transactions to the public through data vendors.

Some commenters raised concerns that this plan failed to take into account the potential negative impact on liquidity that immediate dissemination of bond transaction reports could have on smaller, less-activity traded issues. Additional concerns were raised regarding likely confusion relating to trade reporting obligations in a plan that involved multiple phases and categories of fixed income securities. In response, the NASD has determined to propose a new phase-in methodology. Under this new approach, a member's obligation to report and the NASD's initial dissemination of reports in TRACE-eligible securities will take place as follows:

Phase I—Three Months in Length

- NASD members will be required to report *all* transactions in TRACE-eligible securities within 1 hour of trade execution.
- NASD will immediately disseminate transaction reports to the public and data vendors of all transactions in publicly offered, investment grade corporate bonds having an initial issuance of $1 billion or greater. If applicable, these reports will be disseminated using the large volume trade dissemination cap identifiers (*i.e.*, ''1MM+'' for high yield securities and ''5MM+'' for investment grade corporate bonds) that were proposed in NASD's original TRACE filing.
- Transaction reports in the high yield debt securities denominated as the ''FIPS 50'' at the time of filing becomes effective will also be disseminated—also using the ''1MM+'' large volume trade dissemination cap identifiers.
- The BTRC will commence its examination of the impact of TRACE's transaction dissemination on liquidity. By the end of Phase I (three months after the start of TRACE reporting), the BTRC will provide its recommendations for appropriate dissemination protocols covering those investment grade bonds, starting with the largest issuance size, that, when combined together, make up the top 50% (by dollar volume) of such bonds.

Phase II—Six Months in Length

- NASD members will continue to be required to report *all* transactions in TRACE-eligible securities within 1 hour of trade execution.
- NASD will disseminate transaction reports to the public and data vendors of all transactions in the top 50% (by dollar volume) of investment grade bonds consistent with the recommendations of the BTRC (subject to the approval of the NASD Board and the SEC.[6] If applicable, these reports will be disseminated, subject to using the large-volume trade dissemination cap identifiers (*i.e.*, ''1MM+'' for high yield securities and ''5MM+'' for investment grade securities) that were proposed in NASD's original TRACE filing.
- Three months after the start of Phase II (six months after the start of TRACE reporting), the 1 hour maximum time period to submit TRACE trade reports will be reduced to 15 minutes, subject to the ability of firms to comply technologically and operationally.
- Transaction reports in the ''FIPS 50'' will continue to be disseminated—also using the large volume trade dissemination cap identifiers (*i.e.*, ''1MM+'').
- The BTRC will continue its evaluation of the impact that dissemination of transaction information has on liquidity. By the end of Phase II (9 months after the start of TRACE reporting), the BTRC will provide recommendations for appropriate dissemination protocols for all remaining TRACE issues eligible for public dissemination.

During all phases, the NASD represents that the BTRC continually will evaluate industry technological readiness with a view to reducing further the post-execution deadlines for submitting trade reports to TRACE. The NASD believes that this new approach to collecting and disseminating real-time market data draws an appropriate balance between the Commission's desire for quick and measurable progress in improving transparency in the corporate bond market and industry concerns about liquidity. Moreover, the NASD believes that the new approach captures more information for regulatory purposes in a shorter time frame than under NASD's earlier TRACE transaction reporting plan. In turn, the NASD believes that the new approach will allow it to more quickly to develop and refine its surveillance plan for the fixed income market.

[6] Trade reports for Rule 144A securities will not be considered as part of the total average daily volume of the TRACE system for purposes of Phase II. In addition, the NASD notes that the proposed Phase II formula will result in an overlap with Phase I securities that may reduce the number of newly disseminated bonds in the second phase. The NASD represents that it will ask BTRC to review the Phase II dissemination formula in more detail to determine if a different approach to expanding the universe of disseminated bonds in Phase II is appropriate.

d. TRACE Data

Many commenters raised concerns that TRACE would grant the NASD exclusive control over corporate bond trade data. The NASD, in response to concerns raised regarding such exclusive control, intends to register as an ESIP under Section 11A of the Act. The NASD states that, as explained in the SEC's release entitled *Regulation of Market Information Fees and Revenues,*[7] in furtherance of national market system goals, the SEC recognizes the structure in which one central information processor receives and consolidates market ''information into a single stream for dissemination to the public.''[8] Regarding this consolidated data stream, the NASD notes that the SEC stated, ''the practical effect of comprehensive federal regulation of market information is that proprietary interests in this information are subordinated to the Exchange Act's objectives for a national market system.''[9]

The NASD represents that the SEC exercises oversight over the information consolidator by requiring registration of the consolidator as an ESIP under Section 11A of the Act, and regulating the registered ESIP's conduct. Under Section 11A, the NASD, as the registered ESIP, will be obligated to deliver market information on terms that are fair and reasonable, and to meet all other obligations imposed on ESIPs, including capacity, redundancy, audit trail, and surveillance capabilities. The NASD represents that it will be solely responsible for establishing rules and fees related to the sale of real-time data dissemination, subject to SEC oversight Nasdaq, which will not be the ESIP, will not possess any ownership rights in TRACE data, and will not exercise any control over the TRACE project. Nasdaq's role will be that of a contractor, providing to the NASD the collection and dissemination systems that will enable the NASD to perform its SRO functions.

e. Implementation Schedules

The NASD states that it has discussed TRACE's implementation with various members, vendors, and industry groups to understand the likely amount of time necessary to implement the regulatory reporting and transparency aspects of TRACE. After discussions with corporate bond market participants, the NASD represents that it has determined to modify its original filing and seek

[7] Securities Exchange Act Release No. 42208 (Dec. 9, 1999), 64 FR 70613 (Dec. 17, 1999).

[8] 64 FR 70613, 70615.

[9] Id.

SEC approval to begin phase I of TRACE 180 days following SEC approval of the service. The NASD believes that this additional time will allow its members to better prepare for the advent of TRACE trade reporting as well as give the NASD sufficient time to more fully test TRACE technology.

f. T+1 Clearance and Settlement and STP Issues

Many commenters raised concerns about how TRACE fits into ongoing industry initiatives to facilitate a T+1 clearance and settlement cycle anticipated in 2004 and later, straight-through processing (STP). The NASD believes that TRACE provides significant tools to the fixed income industry to assist them in moving to a T+1 settlement cycle. The NASD represents that when implemented, TRACE's real-time comparison and forwarding features will give market participants a fast, efficient way to enter their ''locked-in'' trade reports into the trade processing system and allow for faster settlement. The NASD believes that TRACE's open system architecture provides multiple ways of entering trade reports and also ensures that these powerful tools will be available to all firms regardless of size. The NASD represents that it is committed to the concept of interoperability between its systems and others operated by national and international clearing entities. In the final analysis, however, it believes that the pressing need for improved transparency in the corporate bond market cannot be subordinated to the much more complex and long-term goals of global straight-through processing. The NASD represents that it will continue to take action to ensure that its systems remain the most flexible and open possible, as well as being capable of quickly and efficiently adapting to whatever STP standards and protocols are adopted in the future.

g. Addition of a Yield Value to TRACE Trade Reports

As a result of further internal NASD review regarding the proper elements of a fixed income transaction report, the NASD has determined to add a yield requirement to TRACE trade reports. The NASD believes that the addition of a yield value, determined in conformity with Rule 10b–10 under the Act, provides a valuable mechanism to match, verify, and analyze pricing of corporate bonds. The NASD notes that firms are already required to provide this information to customers as part of the transaction confirmation process and believes that any additional burden on firms to enter such information is more than offset by the regulatory value of such information. Specifically, the NASD represents that yield information will enable the NASD to identify potentially erroneous fixed income transactions on a real time basic, thereby promoting the integrity of the transactions reports.

The NASD's principal goal in developing TRACE is to meet the mandate of the SEC to provide greater transparency to investors and to enhance the NASD's regulatory oversight of corporate bond trading. The NASD believes it has responded in a flexible and proactive manner to various industry concerns regarding TRACE.

2. Statutory Basis

The NASD represents that it believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

The NASD states that the proposed rule change, if approved, will establish rules for the reporting and dissemination of information on fixed income transactions that will provide the NASD, as the self-regulatory organization designed to regulate the over-the-counter markets, with heightened capabilities to regulate the fixed income markets in order to prevent fraudulent and manipulative acts and practices. The NASD also represents that the proposed structure to collect the information, with the NASD as the proposed exclusive securities information processor under Section 11A of the Act, is consistent with other information processing structures that have been proposed and approved by the SEC, and will foster cooperation and coordination with persons engaged in regulating, clear4ing, settling, and processing information with respect to fixed income securities and among persons facilitating transactions in fixed income securities. Finally, the NASD believes that the proposed rule change, by requiring reporting and dissemination of such transaction information, will protect investors and the public interest by, among other things, increasing transparency in the fixed income market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(c) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate, up to 90 days of such date, if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 and 3, including whether Amendment Nos. 2 and 3 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to Amendment Nos. 2 and 3 to file number NASD 99–65 and should be submitted by December 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30452 Filed 11–28–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43606; File No. SR–NSCC–00–05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Processing Mutual Fund Services

November 21, 2000.

On April 7, 2000, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–NSCC–00–05) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and on April 19, 2000, and May 8, 2000, amended the proposed rule change to modify its rules to allow additional types of investment products to be processed through NSCC's Mutual Fund Services. Notice of the proposal was published in the **Federal Register** on October 23, 2000.[2] Two comment letters were received from one commenter.[3] For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Description

Several NSCC participants who utilize NSCC's Defined Contribution Clearance and Settlement Service of NSCC's Mutual Fund Services have requested that NSCC permit additional types of investment products regulated under state insurance laws or federal or state banking laws to be eligible for processing through NSCC's Mutual Fund Services. Examples of such investment products include stable value funds, separate account group guaranteed investment contracts (which are regulated as group annuities), and bank collective investment trusts.

To accommodate their participants' request, NSCC will create a new class of securities defined as Investment Funds. Pursuant to the rule filing NSCC will: (1) Add Investment Funds as a class of securities eligible for processing through Mutual Fund Services; (2) make corresponding changes to the rules relating to the entities eligible to process Investment Funds transactions through the Mutual Fund Services; (3) establish standards of financial responsibility and operational capability for those participants wishing to process Investment Funds through NSCC's Mutual Fund Services; and (4) make conforming changes to the existing rules where necessary.

Investment Funds will be defined as any fund or investment entity that is subject to regulation under applicable federal and state banking and/or insurance laws. Investment Funds will include such things as bank collective investment trusts, separate account guaranteed investment contracts, and other similar pooled investment vehicles. All Invested Fund products will be subject to regulation under federal or state banking laws or state insurance laws. Only Investment Funds that have been assigned a CUSIP number would be eligible for processing through NSCC's Mutual Fund Services.

For the purpose of processing transactions in Investment Funds, NSCC also will expand the types of entities that may qualify as a Fund Member under Rule 51 of NSCC's Rules so that insurance companies, banks, and trust companies as packagers and sponsors of such funds may apply to become a Fund Member. As with other entities seeking to become Fund Members, any of these new eligible entities seeking to process Investment Fund transactions through NSCC's Mutual Fund Services will be required to enter into an agreement with NSCC that sets forth the entity's rights and obligations as a Fund Member, including that it will limit its use of NSCC's services to use of Mutual Fund Services (or Insurance Processing Services, as the case may be), it will comply with NSCC's rules and procedures, and will permit NSCC to inspect its books and records. Moreover, as with all other transactions in Mutual Fund Services, transactions involving Investment Funds will not be guaranteed by NSCC. As currently provided in NSCC's Rules, if one side fails to pay for a transaction, the contra side will be required to return to NSCC any funds received from NSCC.[4]

Under the rule change, NSCC's Rule 2 will be amended to permit an insurance company to become a mutual fund member or insurance services member in order to transmit Investment Fund Purchases, exchanges, and redemption orders to a fund member and to engage in other customer-related transactions with a funds member. In addition to the standards of financial responsibility and operational capability set forth in Addenda B and I of NSCC's Rules currently applicable to Mutual Fund Service members, insurance services members, and Fund Members, entities seeking to process Investment Fund transactions through Mutual Fund Services will be required to meet the rating and capital requirements set forth in new Addendum V, Financial Standards for Applicants and participants Processing investment Funds Transactions Through Mutual Fund Services.

Since NSCC will make a new category of securities eligible for Mutual Fund Services processing, the rule change will also make conforming changes to certain existing rules in order to include a reference to Investment Funds as applicable.

NSCC believes the proposed rule change is consistent with Section 17A of the Act because it will make a new class of products eligible for processing through NSCC's Mutual Fund Services and thereby should facilitate the prompt and accurate clearance and settlement of these transactions in these products.

II. Discussion

Section 17A(b)(3)(F)[5] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The primary purpose of NSCC's rule change is to expand the types of products processed by and the types of entities processing through NSCC's Mutual Fund Services that should facilitate the prompt and accurate clearance and settlement of transactions in these instruments. Investment products such as Investment Funds are typically included in defined contribution retirement plans and thus their inclusion in Mutual Fund Services should benefit third party administrator (''TPA'') members and other participants by standardizing the processing of these Investment Funds in the same manner as mutual funds are now processed in NSCC's Mutual Fund

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 43447 (October 16, 2000), 65 FR 63278 (October 23, 2000).

[3] Letters from Harold H. Morley, Chairman and Chief Executive Officer, Morley Financial Services, Inc., to Jonathan G. Katz, Secretary, Commission (May 10, 2000); Joan K. Hall, Senior Vice President and Director, Morley Financial Services, Inc., to Jonathan G. Katz, Secretary, Commission (August 15, 2000).

[4] Addendum D of NSCC's Rules and Procedures.

[5] 15 U.S.C. 78q–1(b)(3)(F).

Services. Standardized processing should permit defined contribution plan administrators to provide Investment Fund products to defined contribution plan clients without the proprietary systems or manual processing infrastructure and related costs necessitated by the current processing methods.

In addition to the fact that transactions in Mutual Fund Services are not guaranteed, the rule change establishes standards of financial responsibility and operational capabilities for entities processing Investment Funds through NSCC's Mutual Fund Services. This should help NSCC assure the safeguarding of funds and securities which are in NSCC's control or for which it is responsible. Accordingly, the Commission finds that the rule change is consistent with NSCC's obligations under the Act.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication because accelerated approval will permit NSCC to expand the types of products processed by and the types of entities processing through NSCC's Mutual Fund Services, thereby extending the benefits of the Mutual Fund Services as soon as practicable.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–00–05) be and hereby is approved. For the Commission by the Division of Market Regulation, pursuant to delegated authority. [6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30373 Filed 11–28–00; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43596; File No. SR–NYSE–00–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and of Amendment No. 1 to Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Revisions to the Floor Conduct and Safety Guidelines

November 20, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2000, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. On November 17, 2000, the NYSE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an amendment to the Exchange's Floor Conduct and Safety Guidelines (the ''Guidelines'') with respect to policies and procedures pertaining to The Code of Personal Appearance. The Guidelines are a ''stated policy, practice or interpretation'' concerned with the administration of Exchange Rules 35 and 37. Below is the text of the proposed rule change. Proposed new language, as amended, is italicized and proposed deletions are in brackets.

* * * * *

Floor Conduct and Safety Guidelines Chapter Thirteen: Floor Conduct and Safety Guidelines

1. Guidelines and Fines—The conduct of individuals on the Trading Floor of the New York Stock Exchange and on other premises under Exchange control can significantly affect the public investor's image of the quality, fairness and professionalism of the Exchange [M]*m*arketplace. In addition, the behavior of individuals can impact the safety and welfare of others and affect the efficient, undisrupted conduct of business on the Floor, and on other premises under Exchange control. For these reasons, all persons, while on the Floor of the Exchange and on other premises under Exchange control shall not:

- Engage in any act or practice which may be detrimental to the interest or welfare of the Exchange; or
- Engage in any act or practice which may serve to disrupt or hinder the ordinary and efficient conduct of business; or
- Engage in any act or practice which may serve to jeopardize the safety or welfare of any other individual.

It is the responsibility of all members and Floor clerical employees of members or member organizations to be familiar with the following guidelines governing Floor conduct and safety throughout Exchange premises, and to be aware that the applicable penalties will be imposed where violations of these guidelines are found to have occurred. In addition, where substantial or continued violations of these guidelines occur, that individual will be subject to possible disciplinary action in accordance with the procedures set forth in the Exchange Constitution and Rules.

* * * * *

Code of Personal Appearance—Members and employees of members and member organizations must conform to the revised Trading Floor Code of Personal Appearance. All garments must be reasonably pressed and not wrinkled.

Male Personnel

All male personnel are expected to wear suitable attire as follows: A dress shirt, buttoned at the collar, with a dress tie knotted at the customary place, *i.e.,* snug to the collar; full length dress trousers or slacks; JEANS or OTHER SPORT SLACKS ARE NOT PERMITTED; a jacket with long sleeves (An acceptable jacket shall include a suit, sport coat, blazer or SOLID COLOR office jacket. Any back or side panels or mesh back must be of same color as jacket or black.)

Male Guests

Suit, Sport Coat or Work Jacket must be worn, but a tie is not required. A dress, collared golf/polo shirt or turtleneck is acceptable. T-Shirts, tank

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 16, 2000 (''Amendment No. 1''). In Amendment No. 1, the NYSE amended its rule language to add ''and guests'' to the first sentence under the heading ''Female Personnel and Guests.''

tops or other casual shirts are not acceptable.

Female Personnel *and Guests*

All female personnel *and guests* are expected to wear suitable attire as follows: Skirts and dresses should be worn at appropriate business lengths. No tube skirts, micro-minis, see-through or other extremely revealing styles.

Blouses, shirts, sweaters and tops should be of appropriate style and shall exclude informal wear such as tank tops, tube tops, midriffs, backless halters, see-through blouses, sweatshirts and T-shirts. Leotards, plunging necklines and off-the-shoulder styles are also unacceptable. Pants and slacks should be full length dress slacks. *The following styles are Expressly Not Permitted:* JEANS, LEGGINGS, [OR OTHER] SPORT SLACKS, *CAPRI PANTS, 3/4 LENGTH OR ''CLAM DIGGER/PEDAL PUSHER'' STYLES, SHORTS OR CULOTTES* [ARE NOT PERMITTED]. When slacks are worn, a jacket with long sleeves must be worn. (An acceptable jacket shall include a suit, sport coat, blazer or solid color office jacket. Any back or side panels or mesh back must be of same color as jacket or black.)

Male and Female Requirements

Footwear should be confined to those that are comfortably heeled and considered safe, in view of the heavy traffic on the Trading Floor. Shoes should also be appropriate styles *for a businesslike environment.* [OPEN TOE OR OPEN BACK SANDALS,] FLIP FLOPS, CASUAL BEACH OR BOAT SHOES, [HIGH TOP SNEAKERS] and other extreme styles are NOT PERMITTED. Shoes must be worn at all times on the Floor, including in the booth or behind the post.

[Appropriate hosiery, *i.e.,* socks for men and socks or stockings of appropriate length for women, IS TO BE WORN AT ALL TIMES.] *Men must wear socks. Women should use their judgment depending on the style of clothing worn.*

Summer Attire: The standards of dress outlined above will apply throughout the year. If conditions warrant, the Market Performance Committee may waive certain of the requirements for a specified period of time.

Grooming: Beards, Mustaches, and Sideburns should be neatly trimmed. Hair should be neatly maintained.

	First offense	Second offense
Member.	$250	$500.
Clerk ..	3-day I.D. card suspension.	5-day I.D. card suspension.

Runners: May not wear hats (unless required for religious reasons). No headphones, jeans or other sport slacks are permitted. An acceptable work jacket is required. A tie is not required.

	First offense	Second offense
Clerk ..	3-day I.D. card suspension.	5-day I.D. card suspension.

* * * * *

Approval To Bring Visitors Onto the Floor

* * * * *

Dress Requirements

The member must ensure that all visitors to the Trading Floor comply with the same NYSE Code of Personal Appearance and Dress Code, *as modified,* applicable to all members and member firm personnel working on the Trading Floor.

* * * * *

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the Guidelines is to ensure that the behavior and practices of individuals on the Floor of the Exchange contribute to the efficient, undisrupted conduct of business on the Floor and do not jeopardize the safety or welfare of others. Included in the Guidelines is a Code of Personal Appearance.

The Exchange is proposing to revise the Code of Personal Appearance contained in the Guidelines. The revisions to the Floor Conduct and Safety Guidelines do not affect the existing structure of fines, penalties and disciplinary actions contained in the Guidelines; nor do they affect the rights of members and Floor clerical employees of members and member organizations to appeal, pursuant to existing Exchange rules and procedures, any penalties that are imposed.

The revised Code of personal Appearance provides guidance to members, employees of members, member organizations and guests.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5)[4] of the Act, which requires that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The revisions to the Guidelines support these goals by promoting the efficient, undisrupted conduct of business on the Trading Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change and Amendment No. 1 to the rule change have become effective pursuant to Section 19(b)(3)(A)(i) of the Act[5] and Rule 19b–4(f)(1) thereunder because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.[6]

The NYSE seeks to have the proposed rule change and Amendment No. 1 to

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A)(i).

[6] 17 CFR 240.19b–4(f)(1).

the proposed rule change become operative upon the date of filing with the Commission, October 16, 2000, in order to immediately implement these new revisions to its Guidelines. The proposed rule change and Amendment No. 1 to the proposed rule change are a ''stated policy, practice or interpretation'' concerned with the administration of NYSE Rules 35 and 37.

At any time within 60 days of the filing of the proposed rule change and Amendment No. 1 to the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change and Amendment No. 1 to the proposed rule change are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–00–43 and should be submitted by December 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30376 Filed 11–28–00; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43576; File No. SR–PCX–00–09]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Composition of the PCX Nominating Committee

November 16, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 20, 2000, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On October 17, 2000, the Exchange filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Constitution to change the composition of the Nominating Committee to include public Governors and Equity Trading Permit (''ETP'') Holders, Equity ASAP Holders, or Allied Persons of an ETP firm or an Equity ASAP Holder. The text of the proposed rule change follows. Additions are in *italics*; deletions are in [brackets].

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Cindy L. Sink, Senior Attorney, PCX to Nancy J. Sanow, Division of Market Regulation, Commission, dated October 16, 2000 (''Amendment No. 1''). In Amendment No. 1, the Exchange confirmed that the proposed change to the Constitution was approved by the PCX membership on January 27, 2000. Also, the Exchange revised the Purpose section of the filing to clarify that the proposed rule change is designed to assure a fair representation of its members in the selection of Governors. The Exchange also explained that the propose for eliminating the requirement of a minimum number of floor members on the Nominating Committee was to provide flexibility in the nominating process. Further, in Amendment No. 1, the Exchange made clear that, pursuant to the proposed rule change, only public Governors will be permitted on the Nominating Committee. In this regard, the Exchange represented that it will submit a revision to Art. III, Section 4(a) of the Constitution for membership vote by March 30, 2001 clarifying this point. The Exchange also made technical corrections to the proposal. Finally, in Amendment No. 1, the Exchange requested accelerated approval of the filing.

ARTICLE III

* * * * *

1206 Election of Nominating Committee

SEC. 4(a) At each annual meeting there shall be elected by the membership, by ballot, for a term of one year, a Nominating Committee of nine persons, one of whom shall be nominated as Chair[man] and one of whom shall be nominated as Vice Chair[man] who are eligible for election in accordance with Sec. 4(b) of this Article III, none of whom shall be [a Governor or] an officer of the Exchange. The Nominating Committee shall assume duties as provided in Sec. 4(d) of this Article III.

1211 Eligibility of Members of Nominating Committee

SEC. 4(b). The nine members of the Nominating Committee eligible to be elected at each annual meeting shall be as follows:

At least one [Not less than two] Committee member[s] shall be [floor members and] *a representative of the public. At least* seven Committee members shall be members or office members or office allied members [of the Exchange.]*, Equity Trading Permit Holders, Equity ASAP Holders or Allied Persons of an ETP firm or an Equity ASAP Holder.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Article III, Section 4(a) of the PCX Constitution states that at each annual meeting a Nominating Committee of nine persons shall be elected. No person elected to the Nominating Committee may be a Governor or an officer of the Exchange. The Exchange proposes to amend Section 4(a) to make Governors eligible for election to the Nominating

Committee. The Exchange interprets this proposed revision to mean that only public Governors will be permitted to be elected to sit on the Nominating Committee.[4]

The Exchange believes that by allowing public Governors to serve on the Nominating Committee, the requirement that at least one public representative serve on the Committee could be a met by electing a public Governor. The Exchange proposes this change in an effort to potentially provide public representatives greater influence in the Board of Governors nomination process.

In addition, the Exchange proposes to change references in Article III, Section 4(a) to ''Chairman'' and ''Vice Chairman'' to ''Chair'' and ''Vice Chair.'' The Exchange proposes this change to make the provisions gender-neutral.

Finally, the Exchange proposes to amend PCX Constitution, Article III, Section 4(b), entitled ''Eligibility of members of Nominating Committee.'' Currently, this section states, ''[t]he nine members of the Nominating Committee eligible to be elected at each annual meeting shall be as follows: Not less than two Committee members shall be floor members and seven Committee members shall be members or office members of office allied members of the Exchange.'' The Exchange is proposing to modify Section 4(b) in two respects.

First, with regard to the provision that not less than two Nominating Committee members shall be floor members, the Exchange is proposing to replace it with a new requirement that at least one Nominating Committee members shall be a representative of the public. Accordingly, under the proposal, there may be up to two public representatives on the Nominating Committee at a time, although there must always be at least one. The balance of seats on the Nominating Committee, which will be either seven or eight depending on the number of public representatives nominated at the time, shall be members, office members, office allied members, ETP Holders, Equity ASAP Holders, or allied persons of an ETP Firm or Equity ASAP Holder. The rule change eliminates the requirement that at least two floor members be represented on the Nominating Committee so that the Exchange will have the flexibility to meet its obligation to have a fair representation of Exchange members.[5]

Second, as noted above, the Exchange is proposing to expand the list of members who may serve on the Nominating Committee to include ETP Holders, Equity ASAP Holders, or Allied Persons of an ETP Firm or Equity ASAP Holder. These changes are intended to expand the list of eligible committee members to include new types of members of PCX Equities, Inc.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[7] of the Act, in general, and further the objectives of Section 6(b)(5),[8] in particular, because they are designed to promote just and equitable principles of trade, and to protect investors and the public interest. The Exchange further believes that the proposed rule change will further the objectives of Section 6(b)(3)[9] of the Act, because it is designed to assure a fair representation of Exchange members in the selection of the Exchange's Governors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–00–09 and should be submitted by December 20, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed the Exchange's proposed rule change and finds, for the reasons set forth below, that the proposal, as amended, is consistent with the requirements of Section 6(b) of the Act[10] and the rules and regulations thereunder applicable to a national securities exchange.[11] Specifically, the Commission believes the proposal is consistent with Section 6(b)(3)[12] because it ensures that all member constituencies of the Exchange, including ETP Holders, Equity ASAP Holders, or Allied Persons of an ETP Firm of Equity ASAP Holder, will have the opportunity to be represented on the Nominating Committee. Section 6(b)(3) of the Act requires that the rules of an exchange ensure a fair representation of its members in the selection of its directors. The PCX Nominating Committee is responsible for selecting the slate of appropriate candidates to be presented to the PCX's members for election to the PCX Board of Governors and the PCX Nominating Committee. Thus, by ensuring that all member constituencies are permitted to be represented on the Nominating Committee, the Exchange's proposal should assure that its members are fairly represented when selecting directors.

In addition, the Exchange has proposed to permit public representatives to serve on the Nominating Committee. The Commission believes that allowing public representatives to serve on the Nominating Committee will help to ensure that qualified governors are nominated for positions on the PCX Board, as well as the PCX Nominating Committee. As the Commission has noted in the past, public representatives should provide unique unbiased

[4] The Exchange has represented that it intends to submit a revision to the Constitution for a membership vote that clarifies that the only Governors that may serve on the Nominating Committee are public Governors. *See* Amendment No. 1, *supra* note 3.

[5] The Exchange notes that, for purposes of the Act, ETP Holders and Equity ASAP Holders are ''members'' of the PCX. *See* note 6, *infra.*

[6] *See* Securities Exchange Act Release No. 42759 (May 5, 2000), 65 FR 30654 (May 12, 2000) (order approving PCX proposal to create PCX Equities, Inc.).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(3).

[10] 15 U.S.C. 78f(b).

[11] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(3).

perspectives to the governance of an exchange, and should enhance the ability of an exchange to address issues in a non-discriminatory fashion.[13] Therefore, the Commission believes that adding public representatives to the Nominating Committee should enhance the integrity of the nominating process.

The Exchange has also proposed to permit PCX public Governors to serve as the public representatives on the Nominating Committee. The Commission notes that as currently drafted, the PCX Constitution seems to permit any governor to serve on the Nominating Committee. However, in Amendment No. 1,[14] the Exchange clarified that only public Governors will be permitted to serve on the Nominating Committee, and committed to submit a change to the PCX Constitution to reflect this limitation to its members.[15] The Commission notes that any such clarification must be submitted to the Commission as a proposed rule change and expects such proposed rule change to be submitted as soon as practicable after the requisite member vote. Further, the Commission notes that any change to the PCX's interpretation that this proposal only permits public Governors to be eligible for positions on the PCX Nominating Committee would require a rule change to be submitted to the Commission. For purposes of this filing, however, the Commission believes that it is acceptable to permit public governors to serve as public members of the Nominating Committee.

To accommodate the public positions, the Exchange has eliminated the requirement that at least two floor members be represented on the Nominating Committee. Because the Commission believes that public representation on the Nominating Committee enhances the ability of the Committee to select eligible candidates for the PCX Board and PCX Nominating Committee, the Commission believes that this change is consistent with the Act. Further, the Commission notes that the composition of the Nominating Committee continues to contemplate all types of PCX members. Thus, floor members may continue to be represented on the Nominating Committee, if members are elected.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirteenth day after publication of notice thereof in the **Federal Register**. The Commission understands that the PCX's Nominating Committee is currently considering candidates for election to the Nominating Committee in January 2001. Approval of this proposal on an accelerated basis will enable the PCX Nominating Committee to consider public Governors for the public representative positions on the January 2001 Nominating Committee, which as described above, the Commission believes will enhance the nominating process. The Commission believes that good cause exists consistent with Sections 6(b)(3)[16] and 19(b)[17] of the Act to approve the proposed rule change, as amended on an accelerated basis.

V. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–PCX–00–09), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

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[13] *See* Securities Exchange Act Release Nos. 42235 (December 14, 1999), 64 FR 71839 (December 22, 1999); and 40760 (December 8, 1998), 63 FR 70884 (December 22, 1998).

[14] *See* note 6, *supra.*

[15] *See* Amendment No. 1, *supra* note 3.

[16] 15 U.S.C. 78f(b)(3).

[17] 15 U.S.C. 78s(b).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43567; File No. SR–Phlx–00–100]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Extending Its Pilot Program To Assess a Monthly Credit of up to $1,000 to Qualified Members

November 15, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 8, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 under the Act, proposes to extend its current pilot program that allows certain Exchange members to receive a monthly credit of up to $1,000.[3] The credit will be applied against fees, dues, charges and other amounts as may from time to time be owed to the Exchange that month, except fines, late fees, out-of-pocket expenses,[4] pass-through costs,[5] capital funding fees,[6] payment for order flow fees,[7] and any fees paid by equity trading permit holders in respect of any trading permits the Exchange may issue, (''credit-eligible fees'')[8] by members who own the membership by which they are a member (''member-owners'') and certain other categories of members described below. The current pilot program became effective upon filing on May 16, 2000 and expires on November 16, 2000;[9] the Exchange now proposes to extend the pilot program for an additional six-month period through May 16, 2001.

In addition to member-owners, the credit may be applied against credit-

[3] The extension of the pilot program incorporates three changes to the initial pilot program: (1) Payment for order flow fees are not eligible for inclusion in the credit, (2) daughters-in-law and sons-in-law are now included in the definition of an immediate family member, and (3) the amount of the credit will be included on the member's invoice instead of the member submitting a credit form each month.

[4] Out-of-pocket expenses include charges for wireless telephone services, postage, ILX machines and Dow Jones News Service.

[5] Pass-through costs include charges for member health insurance and parcel delivery services.

[6] Capital funding fees are assessed on owners to provide funding for technological improvements and other capital needs. On June 29, 2000, the Commission approved the capital funding fee for a 36 month period. *See* Securities Exchange Act Release No. 42993 (June 29, 2000), 65 FR 42415 (July 10, 2000) (SR–Phlx–99–51).

[7] Payment for order flow fees are fees imposed on transactions by Phlx specialists and Registered Options Traders in the Top 120 Options on the Phlx. *See* Securities Exchange Act Release Nos. 43177 (August 18, 2000), 65 FR 51889 (August 25, 2000) (SR–Phlx–00–77); 43480 (October 25, 2000) (SR–Phlx–00–86 and SR–Phlx–00–87); and 43481 (October 25, 2000), 65 FR 66277 (November 3, 2000) (SR–Phlx–00–88 and SR–Phlx–00–89).

[8] The credit-eligible fees are fees assessed on members and include transaction as well as trading floor fees. Transaction fees include equity transaction value charges, equity floor brokerage transaction fees, option comparison charges and option transaction charges. Trading floor fees include charges for trading post/booth, controller space, shelf space, transmission, execution/communication charge and floor facility fees. Fees assessed on foreign currency options participants are not considered credit-eligible fees.

[9] *See* Securities Exchange Act Release No. 42791 (May 16, 2000), 65 FR 33606 (May 24, 2000). The credit is part of the Exchange's long-term financing plan, which includes the $1,500 capital funding fee. *See supra* note 6.

eligible fees incurred by the following persons, who are so closely connected to the owners that the Exchange believes they should be treated as member-owners: (1) All members who are parties to an A–B–C agreement [10] with a member organization who owns that membership; or (2) all members who are lessees if: (a) The member is also an owner of a different membership; (b) the member is an immediate family member of the owner of that membership; [11] (c) the member is associated with a member organization in which the owner has an interest of at least ten percent; (d) the member leases from an owner or a related entity of the owner who provides order flow to the Exchange through the member or member organization consisting of at least 5,000 equity trades over the preceding twelve months or 50,000 option contracts over the preceding twelve months; or (e) the member leases from a clearing firm or a related entity of the clearing firm that provides clearing services to the leasing member. The aforementioned categories (including member-owners) are hereinafter referred to as ''qualified members.''

Specifically, the amount of credit-eligible fees owed to the Exchange shall be reduced on a monthly basis by an amount equal to: (1) $1,000 per month if such fees, dues, charges and other amounts are equal to or greater than $1,000, or (2) the amount of such fees, dues, charges and other amounts if such fees, dues, charges and other amounts are less that $1,000.[12] Credits may not be carried over from one month to the next and only one credit of up to $1,000 is available per membership per month.

Credits cannot be shared among members, except qualified members in the same member organization may aggregate their credits. The monthly credit of up to $1,000 will be applied against the invoice of the member or member organization with which the member is associated. However, in no event shall the aggregated credits exceed $1,000 per membership per month.

Initially, any request to receive the credit was application driven, with each applicant submitting an Exchange form delineating the credit-eligible fees for that calendar month. To reduce the burden on members, the Exchange proposes to include the amount of the credit directly on a member's invoice, once it has been established that the member is eligible for the credit, in lieu of requiring the member to complete a credit form each month.[13] A member's eligibility shall be determined by the opening of trading on the first business day of each month. The Exchange reserves the right to suspend the credit at any time.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change Purpose

1. Purpose

a. Introduction

The purpose of the proposed rule change is to amend the Exchange's schedule of fees, dues, and charges to allow for a monthly credit of up to $1,000 to be applied against certain fees, dues, charges and other amounts, as defined above, owed to the Exchange by a qualified member of the Exchange.

As more fully explained below, the Exchange believes that the proposed credit should provide qualified members with additional liquidity and an incentive for seat owners to trade on the Exchange. In turn, the Exchange believes that this will introduce additional liquidity into the marketplace to the benefit of the investing public.

The Exchange believes that leasing of memberships by passive holders of equitable title to lessees who trade on the Exchange (*e.g.,* members) does not necessarily promote the long-term interests of the Exchange. Although the practice of leasing by financial investors to members is permitted by the rules of the Exchange, and may provide an important means by which members can access trading rights on the Exchange, the Exchange believes that lessors who are passive financial investors have a limited stake and interest in the liquidity, technology or operations of the Exchange.

Moreover, such lessors have limited practical ability to influence the affairs of the Exchange, because practically all voting rights are vested in ''members'' under Phlx's Certificate of Incorporation and By-Laws.[14]

The Exchange also believes that members who acquire membership and access trading on the Exchange by means of a lease may in many cases have a very limited stake in the well-being and survival of the Exchange. Although such members may have voting rights, they have no capital investment in their membership, and, because leases typically may be terminated on 30 days notice,[15] they do not necessarily have the incentive to act in the long-term best interests of the Exchange.

Specifically, by terminating a lease with 30 days notice, lessees who do not have ''other'' business interests or relationships with the Exchange beyond the mere existence of a lease (such as those relationships enumerated in part b. below) may, and often do, leave the Exchange to trade on another exchange, perhaps seeking to trade a certain ''hot'' option or other product. Thus, their potential commitment to the Exchange's long-term well-being and survival is undercut by their easy ability to pursue business endeavors that further their own well-being. Further, although member-lessees may be appointed to certain Exchange committees and sub-committees, their motivation to devote the time to such service may be less, as is their incentive to make decisions focused on the long-term. Both daily and longer term, strategic decision-making could thus be affected.

[10] Pursuant to Phlx Rule 940, the parties to an A–B–C agreement are an employee, general partner, or officer and the member organization with which such person is associated. The member organization provides all or part of the funds for the purchase of a membership of which the legal title is placed in the member and the equitable title is placed in the member organization.

[11] Immediate family member is defined as a member's spouse, parents, stepmother, stepfather, mother-in-law, father-in-law, brothers, sons-in-law, brothers-in-law, stepbrothers, sisters, daughters-in-law, sisters-in-law, stepsisters, children, stepchildren and any other person living with the member for whom the member provides at least 50 percent of his/her financial support per year.

[12] For example, if a member has $1,500 in credit-eligible fees for the month, such member is entitled to the full $1,000 credit. However, if the member has $600 in credit-eligible fees for the month, such member is entitled to a $600 credit.

[13] The Exchange believes that placing the amount of credit on a member's invoice should reduce the burdens associated with completing the credit form each month. However, the Exchange may revert to the credit form process at a later date if it is determined that credits are more efficiently processed that way. If any changes are made to the credit form process, members will be given updated instructions as to how to apply for the credit.

[14] A lessor is entitled to vote in any decision relating to a compromise or arrangement between the Phlx and its creditors or its members, or relating to a reorganization of the Phlx. *See e.g.* Article Thirteen of the Exchange's Certificate of Incorporation and Phlx By-Law Article XII, Section 12–6.

[15] *See* Phlx Rule 930(b).

This sort-term commitment may also bear on the quality and quantity of liquidity provided on the Exchange. Building order flow commitments with order flow providers is a long-term endeavor, often requiring regular performance, evaluation, and most importantly, a relationship with the trading crowd providing liquidity. Thus, familiarity and consistency of crowd participation are an important marketing mechanism to order flow providers. Providing liquidity also involves a longer-term view of sacrificing profit today for continued order flow, as well as acknowledging that not every order is a profitable one, but continuous order flow, spawned by ample liquidity, should, over time, provide more opportunity for additional order flow.

Lessees that do not have other business interests or relationships (such as those referred to in part b. below) may also have a limited stake in the technology of the Exchange, including participation in any good use of technology, nor would they necessarily have an incentive to invest in the longer-term development of that technology. Such investment is not only financial, but also strategic. Such lessees may also have a limited stake in the operations of the Exchange, including the continued long-term refinement and upgrading of facilities, other equipment and the pricing of such operations. In sum, lessees, absent other factors tying them to the Exchange, may be less vested in the long-term success of the Exchange, in terms of a lesser incentive to create liquidity, invest in technology and be active in strategic and daily decision-making.

In contrast, the Exchange is of the view that members who *own* their own memberships (and their functional equivalents, such as members who lease their memberships from close family members), and members who have certain other business or financial relationships with owners who are active on the Exchange (*e.g.,* members who are associated with member organizations and hold their memberships pursuant to ''A–B–C agreements'') have a combination of financial incentives and voting rights (in some cases, indirectly via the owners with whom they are closely related or associated) to create liquidity on the Exchange, to invest in systems and compliance infrastructure, to be active in and informed about the decision-making processes of the Exchange, and otherwise to act in the Exchange's long-term best interests. By providing the credit described in this filing to these group of members, the Exchange expects to create economic incentives for owners to trade on the Exchange by actively using their memberships (or selling them to persons who would do so) and for members to organize their affairs in ways that, in the Exchange's view, properly align the interests of the members with the long-term interest of the Exchange. The Exchange also believes that the credit should help retain or create liquidity on the Exchange by freeing up funds that member-owners or their functional equivalents may otherwise be expending on credit-eligible fees.[16]

Although the credit is available to some Exchange members and not others, it meets the criteria set forth in Sections 6(b)(4)[17] and 6(b)(5)[18] of the Act because it: (1) Provides for '' * * * the equitable allocation of dues, fees and other charges among its members * * * and other persons using its facilities''; and (2) is not designed '' * * * to permit unfair discrimination between customers, issuers, brokers or dealers.'' Although the Exchange is not aware of precedents in which other exchanges have established fee or credit programs based upon ownership of seats or the connection between lessees and their lessors, as the Phlx proposes to adopt in this filing, the Commission has approved many exchange fee and credit arrangements that do not treat all members (or other persons covered by Sections 6(b)(4)[19] and (5))[20] equally, such as credits and discounts based on transaction volume, fees based upon the usage by certain members of equipment or other services or resources of an exchange, and fee structures that distinguish among the various activities of persons and firms (*e.g.,* specialists versus floor brokers, or specialists versus market makers). As with the proposed credit, such measures are designed to promote and encourage certain behaviors and/or discourage others. The Exchange believes that this is an appropriate, nondiscriminatory business strategy.

As more fully articulated below, the Exchange believes that the credit is equitably distributed and not unfairly discriminatory, because it is based on legitimate, reasonable business interests of the Exchange, and is reasonably designed to further those interests. Moreover, it does not unfairly single out individuals or groups for personal or political reasons. To the contrary, any member may become eligible for the credit by changing the way in which such member finances his or her access to the Exchange by purchasing the membership or by changing the member's lease arrangement.

b. More Detailed Rationale Specifically Applied to the Various Eligibility Criteria

i. *Member-Owners.* In many areas of economic life, businesses and governments establish incentives to encourage behavior that is deemed desirable. In the case of exchanges, volume discounts and credits encourage members to direct transaction volume and trading activity to the exchange; other fee structures are designed to deter excessive usage of exchange resources or to cause scarce resources to be allocated more efficiently (*e.g.,* equipment service fees or fees relating to use of post/booth space on the floor).[21] The Exchange, as a matter of policy, believes that owner-membership or its functional equivalents as described above, should be encouraged because:

(A) Unlike passive, financial investors, owner-members risk their capital by their trading and other activities on the floor, thereby (in many cases) creating liquidity in our market and generating revenues for the Exchange, both directly through transaction-based revenues, and indirectly, by generating activity that results in tape revenues, such as under the Consolidated Tape Association (''CTA'') and Options Price Reporting Authority (''OPRA'') plans.[22]

[16] The Exchange notes that, as part of its overall strategic financing plan, it separately instituted a $1,500 monthly capital funding fee upon all ''owners,'' regardless of their level of activity (if any) on the Exchange. *See supra* note 5. Although the credit is not available to offset all or any portion of the capital funding fee, the credit will enable member-owners and others eligible for the credit to defray a portion of the transaction and other fees charged by the Exchange (and that, in general, result from member activity on the Exchange), thereby effectively reducing, for member-owners and other eligible members the cost of trading on the Exchange. Therefore, the credit may also have the indirect effect of blunting the incremental economic burden of the capital funding fee for owners who are active and, directly or indirectly, trading on (or otherwise providing certain economic benefits to) the Exchange. In addition, the credit frees up funds for trading activity on the Exchange that would otherwise be used for the payment of credit-eligible Exchange fees.

[17] 15 U.S.C. 78f(b)(4).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(4).

[20] 15 U.S.C. 78f(b)(5).

[21] *See e.g.,* Securities Exchange Act Release Nos. 41748 (August 16, 1999), 64 FR 46218 (August 24, 1999) (SR–CBOE–99–34); 40496 (September 29, 1998), 63 FR 54175 (October 8, 1998) (SR–PCX–98–42); and 41108 (February 25, 1999), (64 FR 10516 (March 4, 1999) (SR–BSE–99–2).

[22] The CTA Plan and the OPRA Plan were approved by the Commission as national market system plans under SEC Rule 11Aa3–2, 17 CFR 240.11Aa3–2, governing the dissemination of market information for certain equity securities and

Continued

Seat ownership is one aspect of Exchange ''investment'' and the actual use of that membership by the qualified member is a different form. Member-owners or their functional equivalents, have additional operational and market risks. For example, a qualified member who is also a specialist or market maker may have additional risks related to fluctuations in the securities market and order-processing errors in addition to market risks associated with seat ownership. Similarly, a qualified member who is also a specialist may have risks (in addition to seat risk) associated with the specialists' obligation to promote a fair and orderly market and, particularly, maintain the limit order book. Furthermore, in addition to any fees assessed on owners, qualified members also contribute to the Exchange by paying transaction fees, such as equity transaction value charges, equity floor brokerage transaction fees, option comparison charges and option transaction charges, and trading floor fees, such as trading post/booth, controller space, shelf space, transmission, execution/communication charges and floor facility fees.

(B) Unlike members who lease their seats under typical lease arrangements that may be cancelled on 30 days' notice, member-owners have a significant capital investment at risk; and

(C) Unlike owners that are not members, member-owners may have voting rights under the Exchange's by-laws, and may participate on certain Exchange committees. [23]

Because of their dual interest in preserving and increasing the value of their memberships, and in the technological, operational, and regulatory infrastructure that affects the present and future conditions of transacting business on or at the Exchange, the Exchange believes that member-owners have powerful incentives to create liquidity on the Exchange, and to participate responsibly in the business life of the Exchange through the exercise of voting rights, and through service on the Board and certain Exchange committees. The concept (and the underlying policy) of making the credit available to member-owners is not unlike that of the federal government in providing tax incentives to homeowners that are not available to renters. The long-term capital stake of the homeowner in his or her property promotes various behaviors that have social utility in that it fosters community-oriented behavior, and increases the prospect that the homeowner will make further socially useful investments in the property and in the neighborhood.

The Exchange believes that similar principles are involved in the instant case. The ability to lease memberships has been available for many years. Over time, the equitable ownership of memberships by passive financial investors has become a very pervasive phenomenon at the Exchange, with 324 of the Exchange's 505 memberships being owned by such financial investors.[24] Of those memberships owned by passive financial investors, approximately 48 memberships are currently dormant (neither used for active trading nor leased).[25] Although the Exchange believes that leasing of memberships has a legitimate role in providing members a means of accessing trading rights on the Exchange, it also believes that the extent to which long-term capital investment is currently divorced from voting rights and trading interest is not healthy insofar as it relates to the long-term viability of the institution and its membership as a whole. The credit should create an incentive for owners to actively use their trading rights through membership and for members to reconsider the manner in which they finance their access to the Exchange. Furthermore, the Exchange believes that the credit will free up funds for those owners who are most likely to put their capital to work by trading and creating liquidity on the floor. The credit may also effectively (but indirectly) lessen the overall impact of the capital funding fee on those owners who are trading at the Exchange and (because the credit may be applied against transactional fees) create further incentives to trade.

The Exchange notes that no member may claim that his or her lack of eligibility for the credit is unfair or discriminatory. Any member may obtain eligibility for the credit by changing his or her method of financing their access to the Exchange—*e.g.,* by purchasing their membership and (if they choose) borrowing from third-party lenders to effect that purchase. Any owner may obtain eligibility for the credit by, for instance, becoming an Exchange member (if they qualify for this and subject to the procedures set forth in the Exchange's rules).

ii. *Members/Member Organizations with A-B-C Agreements.* By definition, with respect to A-B-C agreements, there is a very close nexus between a member and the member organization with whom the member is associated; in general, the member is an employee of the member organization. This close connection is reflected in the fact that the member organization provides all or part of the funds for the purchase of the membership of which the legal title is placed in the member, while the equitable title remains with the member organization.[26] In addition, the Exchange's By-Laws state, in part, that ''[a]n A-B-C-Agreement is a contract between the member and member organization with which the member is associated in which a portion of the risk of fluctuations in the value of the membership shall rest with the member organization rather than with the member.''

Pursuant to the A-B-C agreement, the member contributes the use of the membership to the member organization and subjects the membership to the claims of the creditors of the member organization. Moreover, the member organization pays the dues, fees and other charges on behalf of the member. Thus, given this unique business relationship, owners who are member organizations have significant capital investment at risk and have a long-term interest in preserving and increasing the value of their membership, much like member-owners. For this reason, the Exchange is providing the credit to members who are parties to an A-B-C agreement with a member organization who owns that membership.

iii. *Lessees.* As stated previously, although leasing arrangements are permitted, lessees, other than the five types of qualifying members discussed in detail below (''non-qualifying lessees''), may have a limited stake in the long-term well-being of the Exchange. In fact, non-qualifying lessees may lack the incentive to engage in certain types of behavior that promote the long-term best interests of the Exchange, including providing liquidity and investing in technology enhancements. Specifically, non-qualifying lessees who do not put their own (or a member with whom they have a close nexus) capital at risk with respect to a membership may provide liquidity or order flow with less of a long-term view and more of a focus on their current market risk only. This view may be at odds with behavior needed to

options, respectively; these plans govern both the fees that can be charges for such information as well as the distribution of revenues derived from those fees among participants in these plans, including the Exchange.

[23] *See supra* note 14.

[24] As of March 31, 2000, 324 memberships were subject to lease agreements. This number may change on a monthly basis.

[25] As of March 31, 2000, 48 seats were dormant (neither used for active trading nor leased).

[26] *See* Phlx Rules 940 and 941.

address long-term Exchange needs. These non-qualifying lessees who do not have the types of additional connections to owners on the Exchange described below, may only have the incentive to participate in a self-focused way for their short-term benefit. If the credit were made available to all lessees, it would not serve its purpose as an inducement to promote owner-membership or other relationships to the Exchange that the Exchange believes are the most conducive to its continued health and success. Therefore, the Exchange is not making the credit available to all lessees. However, the Exchange is seeking to provide the credit to those qualified members whose relationship with the owners from whom they lease their seats is such that the Exchange believes they (either individually or indirectly when viewed in conjunction with their owners) have incentives properly aligned with the long-term interests of the Exchange.

(A) Members Who Are Lessees But Who Also Are Owners of Different Memberships

Members who are lessees but who also are owners of a different membership should be accorded the same treatment as the traditional member-owners who were previously discussed. These members, who are also owners, have an interest in preserving and increasing the value of their membership as well as an interest in preserving and increasing the standard of technology and the operational and regulatory infrastructure that affects the present and future conditions of transacting business at the Exchange. As with traditional member-owners, the Exchange believes that the credit will free up funds for those members who are also owners thereby encouraging them to put their capital to work by trading and creating liquidity on the floor. As previously discussed, the credit may also effectively (but indirectly) lessen the overall impact of the capital funding fee on those owners who are trading at the Exchange.

(B) Members Who Lease From Close Family Members

At the Phlx, many member firms are family businesses, which choose to structure their operations with the owner being a relative (rather than that member) for tax or estate planning purposes. The Exchange believes that there is commonality of interest in property of close family members, thus affording the credit to members who lease from close family members. This concept is one that is widely accepted, especially in connection with rules relating to the securities industry and tax law. For example, Rule 16a–1(a)(2) [27] under the Act defines the term ''beneficial owner'' to mean any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares a direct or indirect pecuniary interest in the equity securities. Indirect pecuniary interest is then defined to include securities held by members of a person's immediate family sharing the same household.[28] In addition, Rule 701 under the Securities Act of 1933 (''Securities Act'')[29] exempts from Section 5 of the Securities Act [30] certain offers and sales of securities under a written compensatory benefit plan established by the issuer for the participation of their employees and their family members who acquire such securities from such persons through gift or domestic relations orders. Family members are defined in Rule 701(c)(3) [31] the same as ''immediate family'' is defined in Rule 16a–1(e). [32]

Tax laws also recognize the commonality of interest in property of close family members. For example, the Internal Revenue Code (''IRC'') recognizes the shared interests of family members by way of attributing the ownership of stock held by close family members to the taxpayer. [33] The IRS treats stock owned by these close family members as owned by the taxpayer in determining the tax liability of the taxpayer in various situations.[34]

A further example is the National Association of Securities Dealers, Inc. (''NASD'') Freeriding and Withholding Interpretation,[35] which restricts sales by NASD members to accounts in which so-called ''restricted persons'' have a beneficial interest. Such restrictions are also applicable, with some exceptions, to immediate family members of those restricted persons.

The Exchange believes that it should not penalize members who choose to lease memberships from close family members, as it believes that these persons are the functional equivalents of member-owners, and the same rationale applies to giving the credit to these members as to member-owners.

(C) Members Who Are Associated With a Member Organization in Which the Owner Has an Interest of at Least Ten Percent

Members who are lessees and are associated with a member organization in which the owner has at least a ten percent interest also should be eligible for the credit based on their closely aligned interests with the owner. The federal securities laws and rules of the securities industry have long recognized that a ten percent ownership interest is a significant capital investment. For example, Section 16 of the Act [36] requires any person who is the beneficial owner of more than ten percent of an equity security registered under Section 12 of the Act [37] to file a statement with the Commission indicating his ownership interest. Section 16 [38] also treats such beneficial owners as company insiders and limits their ability to realize ''short swing'' profits. In enacting Section 16,[39] the Congress found that a ten percent owner was sufficiently involved in the affairs of the issuer to be treated as an insider.

Moreover, for purposes of NASD Conduct Rule 2720, which restricts the ability of an NASD member to participate in the distribution of a public offering of its own securities or the securities of the member's parent or affiliate, a company is presumed to control a member (and this is an affiliate) if the company beneficially owns ten percent or more of the member firm. Finally, under the NASD's Freeriding and Withholding Interpretation [40] an individual with a ten percent or more equity interest in an NASD member firm is deemed restricted by virtue of his ownership interest, and, thus, NASD member firms may not sell so-called ''hot issues'' to that individual.

In each of these examples, Congress or the NASD found that a ten percent owner is sufficiently involved in the affairs of the subject entity to be subject to the applicable restriction. A similar analysis is applicable with respect to owners of Phlx memberships who hold a ten percent or greater interest in the very member organization with which the lessee is associated. The interests of the owner, the member lessee and the member organization are sufficiently

[27] 17 CFR 240.16a–1(a)(2).

[28] Immediate family is defined to mean any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and includes adoptive relationships. 17 CFR 240.16a–1(e).

[29] 17 CFR 230.701.

[30] 15 U.S.C. 77e.

[31] 17 CFR 230.701(c)(3).

[32] 17 CFR 240.16a–1(e).

[33] *See* 26 U.S.C. Section 318.

[34] *See* 26 U.S.C. Section 301 et seq.

[35] NASD Conduct Rule IM–2110–1. The Freeriding and Withholding Interpretation is based on the premise that NASD members have an obligation to make a bona fide distribution of securities of a public offering that trade at a premium in the secondary market.

[36] 15 U.S.C. 78p.

[37] 15 U.S.C. 78L.

[38] 15 U.S.C. 78p.

[39] *Id.*

aligned to allow the lessee member the benefit of the credit.

(D) Members Who Lease From Owners or Their Affiliates Who Provide Order Flow to the Exchange Member

Similar to member-owners and other eligible members discussed above, members who lease from owners or their affiliates who provide order flow to the Exchange through the member or member organization have a direct contractual relationship with that owner. For example, a floor broker who executes orders entered by the owner from whom the member leases his or her seat has a fiduciary relationship with that owner. The member derives income, by way of commissions, from the order flow provider and the order flow provider, in turn, provides revenue to the Exchange mainly by way of transaction fees (and indirectly via tape revenues). Giving a credit to members in this situation should encourage the member to fully maximize the business relationship between the floor broker and order flow provider by encouraging the member to get more order flow, which in turn equates to an increase in fees paid by the floor broker to the Exchange. The Exchange believes that by extending the credit to this category of members who are closely associated with the owner, it is encouraging behavior that is beneficial to the long-term interests of the Exchange, *e.g.*, providing more order flow.

(E) Members who Lease From a Clearing Firm or a Related Entity of the Clearing Firm That Provides Clearing Services to the Leasing Member

Members who lease from a clearing firm or related entity of the clearing firm that provides clearing services to the leasing member should also be eligible to receive the credit. Members have a close connection to their clearing firms, or a related entity of the clearing firms, in that the clearing firms provide important and essential services by contractual agreement with such members; for instance, they guarantee members' trades. In addition, clearing firms lend money and extend credit; they also manage risk by way of tracking positions and other monitoring functions. Moreover, the clearing firm offers various ancillary services to the members, including stock executions services, office space and other business amenities. Therefore, given this close connection between the members and clearing firms or their affiliates, the Exchange believes that the credit is appropriate and should further their joint interest in the well-being of the Exchange.

2. Statutory Basis

For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[41] in general, and with Section 6(b)(4)[42] in that it provides for the equitable allocation of reasonable dues, fees and other charges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change imposes no inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received regarding an extension of the monthly credit.[43]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[44] and Rule 19b–4(f)(2) thereunder[45] because it establishes a due, fee or other charge. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–100, and should be submitted by December 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[46]

Margaret H. McFarland,

Deputy Secretary.

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[41] 15 U.S.C. 78f(b).

[42] 15 U.S.C. 78f(b)(4).

[43] Written comments were received in connection with the initial proposed rule change relating to the credit, which is currently in effect. These comments are described in the previous Commission release noticing the filing and immediate effectiveness of the initial proposal. *See* Securities Exchange Act Release No. 42791 (May 16, 2000) 65 FR 33606 (May 24, 2000) (SR–Phlx–00–44).

[44] 15 U.S.C. 78s(b)(3)(A)(ii).

[45] 17 CFR 240.19b–4(f)(2).

[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43584; File No. SR–PHLX–00–52]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Review of Decisions of the Exchange's Business Conduct Committee

November 17, 2000.

On August 18, 2000, the Philadelphia Stock Exchange Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The Exchange proposed amendments to its rules concerning appeals from decisions in disciplinary proceedings. The proposed rule change was published for comment in the **Federal Register** on October 13, 2000.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

I. Description of the Proposal

The Exchange proposes to amend the text of Phlx Rule 960.9 to incorporate specific procedures for appeals from decisions rendered in disciplinary

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 43415 (October 4, 2000), 65 FR 61014 (File No. SR–PHLX–00–52).

proceedings by the Exchange's Business Conduct Committee pursuant to Phlx Rules 960.6(c) and 960.8. Currently, decisions made in disciplinary proceedings are appealed in accordance with Phlx By-Law Article XI. The procedures set forth in the Phlx's By-Laws, however, were not strictly formulated for disciplinary matters, and, as a result, are often silent on unique issues that apply to disciplinary matters. To ensure that appeals in disciplinary proceedings are accomplished in a consistent and orderly manner, the Exchange expanded the procedures in Phlx Rule 960.9 into four categories: (a) Petition by Respondent; (b) Conduct of Review; (c) Review on Motion by Board of Governors; and (d) Petition by Enforcement Staff.

The proposed amendment to paragraph (a) of Phlx Rule 960.9 is intended to provide time guidelines for requesting an appeal. The Respondent's petition for appeal must be in writing and filed with the Secretary of the Exchange within 10 days after service of notice and a copy of the decision of the Business Conduct Committee. The petition must specify the findings and conclusions that are the subject of the petition, along with the reasons the Respondent is petitioning for review. Exchange Enforcement Staff will have 15 days to file a written response. The Respondent may then file a reply within 15 days after service of the Enforcement Staff's response.

Paragraph (b) of the proposed rule, ''Conduct of Review,'' provides that the review shall be conducted by the Exchange's Board of Governors (''Board''), or an Advisory Committee made up of three Governors, with at least one being a non-industry Governor appointed by the Chairman of the Board. No Governor who was a member of the hearing panel below may participate in the hearing on review. Unless the Board of Governors or Advisory Committee hearing the review allows oral argument, the review will be based solely on the record below. If an Advisory Committee hears the review, it must submit a written report to the Board.

Sub-paragraphs (b)(ii) and (iii) of the proposed rule set forth the standard of review for the Board or Advisory Committee. The decision of the Business Conduct Committee can be affirmed, reversed or modified, in whole or in part. A modification may include an increase or decrease of the sanction. However, neither the Board nor the Advisory Committee may reverse or modify the findings, conclusions, and decision of the Business Conduct Committee if the factual conclusions in the decision are supported by substantial evidence, and such decision is not arbitrary, capricious or an abuse of discretion.

In paragraph (c), the proposed rule change includes procedures for a review by the Board of Governors on its own initiative. The review would follow the procedure set forth in paragraph (b) of the proposed rule. Together, these provisions are intended to establish a standard and process of review.

Finally, paragraph (d) of the proposed rule sets forth the procedures by which the Exchange's Enforcement staff may petition the Board for permission to appeal. The petition must specify the findings and conclusions that are the subject of the petition, along with the reasons the staff is petitioning for review. If the Board grants permission, the Exchange's Enforcement staff must serve a copy of the petition on the Respondent within 5 days. The respondent then has 15 days to file a written response with the Board, and the staff would have 15 days to file a reply.[4]

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Sections 6(b)(6) and 6(b)(7).[5] Section 6(b)(6) requires that members and persons associated with members be appropriately disciplined for violation of any provision of the Act, the rules and regulations thereunder, or the rules of the Exchange. Section 6(b)(7) of the Act requires, among other things, that the rules of the Exchange provide a fair procedure for the disciplining of members and persons associated with the members.

Currently, the Phlx does not have detailed procedures for appeals from decisions in summary and regular disciplinary proceedings. The Commission believes that the proposed procedures in Phlx Rule 960.9 could provide for a more appropriate and fair disciplinary procedure. For example, paragraphs (b) and (c) of revised Rule 960.9 set forth a standard of review the Board of Governors or the Advisory Committee must follow in deciding whether to affirm, reverse or modify the decision of the Business Conduct Committee. The Commission believes that explicit standards will help ensure that decisions in disciplinary proceedings are not rendered arbitrarily.

The Commission also believes that the clear time guidelines set forth in paragraphs (a), (c), and (d) enhance the fairness of the disciplinary procedure. Currently, Phlx Rule 960.9 only dictates the time a respondent has to file an appeal. Under the proposal, the expanded procedures in Rule 960.0 layout the timetable for responses and replies to be filed. Thus, respondents and the Exchange's Enforcement staff will not be subjected to unnecessary delays. The Commission believes this is a more fair procedure because it brings a measure of finality to disciplinary proceedings.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–PHLX–00–52) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

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[4] Review of appeals initiated by the Exchange's Enforcement staff will be conducted in accordance with the procedure set forth in paragraph (b) of the proposed rule. Telephone conversation between Charles Falgie, Director of Enforcement, Phlx, and Anitra Cassas, Special Counsel, Division of Market Regulation, Commission, on October 3, 2000.

[5] 15 U.S.C. 78f(b)(6) and (b)(7).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43585; File No. SR–Phlx–00–98]

Self-Regulatory Organizations; Notice of Filing of Proposed By-Law Change by the Philadelphia Stock Exchange, Inc., Relating to Allocation, Evaluation and Securities Committee

November 17, 2000.

Pursuant to Section 10(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 [2] thereunder, notice is hereby given that on November 7, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed by-law change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed by-law change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 U.S.C. 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its By-Law, Article X, Section 10–7—Options Allocation, Evaluation and Securities Committee and Equity Allocation, Evaluation and Securities Committee. The proposed amendment would clarify that references to the ''Allocation, Evaluation and Securities Committee'' in the Exchange By-Laws and Rules may mean either the Options Allocation, Evaluation and Securities Committee or the Equity Allocation, Evaluation and Securities Committee, as the context requires. The text of the proposed by-law change is set forth below. New language is in italics.

Article X, Section 10–7*(e)*

For purposes of these By-Laws, and Exchange Rules, references to the ''Allocation, Evaluation and Securities Committee'' shall mean either the Options Allocation, Evaluation and Securities Committee or the Equity Allocation, Evaluation and Securities Committee, as the context requires.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed by-law change and discussed any comments it received on the proposed by-law change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 5, 2000, the Commission approved changes to Phlx By-Law Article X, Section 10–7, which divided the Allocation, Evaluation and Securities Committee into two separate committees: The Options Allocation, Evaluation and Securities Committee and the Equity Allocation, Evaluation and Securities Committee.[3] Currently, various sections of the Exchange's by-laws and rules simply refer to the ''Allocation, Evaluation and Securities Committee.'' The proposed amendment to Article X, Section 10–7(e) of the Phlx's by-laws would provide that any reference to the ''Allocation, Evaluation and Securities Committee'' would mean either the Options Allocation, Evaluation and Securities Committee or the Equity Allocation, Evaluation and Securities Committee, as the context requires.

The purpose of the proposed by-law amendment is to clarify that references to the ''Allocation, Evaluation and Securities Committee'' in the Exchange's by-laws and rules may mean either the Options Allocation, Evaluation and Securities Committee or the Equity Allocation, Evaluation and Securities Committee, as the context requires, and to ensure that the by-laws and rules pertaining to each committee remain consistent.

2. Statutory Basis

The Phlx believes the proposed rule change is consistent with Section 6 of the Act[4] in general and with Section 6(b)(5)[5] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by enabling the Exchange to provide a responsive administrative process with respect to the operation of the Options Allocation, Evaluation and Securities Committee and the Equity Allocation, Evaluation and Securities Committee, consistent with the Exchange's by-laws and rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed by-law change would impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or with such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed by-law change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed by-law change that are filed with the Commission, and all written communications relating to the proposed by-law change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–98 and should be submitted by December 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30383 Filed 11–28–00; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* Securities Exchange Act Release No. 43011 (July 5, 2000), 65 FR 43069 (July 12, 2000) (File No. SR–Phlx–00–28).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before December 29, 2000. If you intend to comment but cannot prepare comments

promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Voluntary Customer surveys in Accordance with E.O. 12862.

No: N/A.

Frequency: On Occasion.

Description of Respondents: Various SBA Program Offices.

Annual Responses: 86,614.

Annual Burden: 13.102.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00–30334 Filed 11–28–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before December 29, 2000. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Secondary Participation Guaranty Agreement.

No: 1086.

Frequency: On Occasion.

Description of Respondents: Participating Lenders used these forms to apply for initial issuance of an SBA Guarantee Interest Certificate.

Annual Responses: 12,500.

Annual Burden: 46,875.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00–30335 Filed 11–29–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before December 29, 2000. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Notice to New SBA Borrowers.

No.: 793.

Frequency: On Occasion.

Description of Respondents: Companies are required to keep records in order for SBA to determine the compliance status of the recipient.

Annual Responses: 26,420.

Annual Burden: 6,044.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00–30414 Filed 11–28–00; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). The Social Security Administration (SSA) is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Application for Benefits Under The Federal Mine And Safety And Health Act Of 1977, as Amended (Widow's Claim, Child's Claim And Dependent's Claim)—0960–0118. Section 402(g) and Section 412(a) of the Federal Mine Safety and Health Act provide that those widows, surviving children and dependent parents, brothers and sisters who are not currently receiving benefits on the deceased miner's account must

file the appropriate application for Black Lung benefits within 6 months of the deceased miner's death. Forms SSA–47–F4, SSA–48–F4, and SSA–49–F3 are used to collect the information needed by the SSA to determine eligibility for benefits. The respondents are widows, surviving children and dependents (parents, brothers or sisters) who are not currently receiving Black Lung benefits on the deceased miner's account.

	SSA–47–F4	SSA–48–F4	SSA–49–F3
Number of Respondents	600	600	600
Frequency of Response	1	1	1
Average Burden Per Response (minutes)	11	11	11
Estimated Annual Burden (hours)	110	110	110

2. Representative Payee Report of Benefits and Dedicated Account—0960–0576. Form SSA–6233 is used to ensure that the representative payee is using the benefits received for the beneficiary's current maintenance and personal needs and that expenditures of funds from the dedicated account are in compliance with the law. The respondents are individuals and organizational representative payees who are required by law to establish a separate (''dedicated'') account in a financial institution for certain past-due SSI benefits.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 10,000 hours.

3. Physician's/Medical Officer's Statement of Patient's Capability to Manage Benefits—0960–0024. SSA uses the information collected on Form SSA–787 to determine an individual's capability, or lack thereof, to handle his or her own benefits. The information also provides SSA with leads to follow in selecting a representative payee, if needed. The respondents are physicians of these beneficiaries.

Number of Respondents: 120,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 20,000 hours.

4. Request for Internet Service—Password—0960–NEW. SSA will collect and use information to establish a PIN/Password Data File. The file will be used to allow customers to conduct electronic business with the Agency. SSA will request the following information: Name, Social Security Number, Password Request Code, Last Month Payment Amount and Director Deposit Account Number (if applicable). The respondents are individuals electing to conduct business with SSA in the electronic medium.

Number of Respondents: 250,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 41,667 hours.

5. Internet Social Security Benefits Applications (also known as ISBA)—0960–0618. The ISBA (formerly the Internet Retirement Insurance Benefit or IRIB application) is one application that the Commissioner of Social Security will prescribe to meet the requirement to file an application for title II retirement and/or spouse's benefits. The ISBA will be available on the Social Security Administration Internet site and will enable individuals to complete the application electronically on their own and submit the application over the Internet. Until SSA develops an acceptable electronic signature process, applicants will also print, sign and mail the IBSA statement with the required evidence that supports their application. The information that SSA collects will be used to determine entitlement to retirement insurance benefits. The respondents are individuals and their spouses, if applicable, who choose to apply for title II benefits over the Internet.

Number of Respondents: 189,764.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 63,255 hours.

6. Discrimination Complaint Form—0960–0585. The information collected on form SSA–437 will be used by SSA to investigate and informally resolve complaints of discrimination based on race, color, national, origin, sex, age religion and retaliation in any program or activity conducted by SSA. A person who believes that he or she has been discriminated against on any of the above bases may file a written complaint of discrimination. The information will be used to identify the complainant; identify the alleged discriminatory act; ascertain the date of such alleged act; obtain the identity of the individual(s)/facility/component that allegedly discriminated; and ascertain other relevant information that would assist in the investigation and resolution of the complaints. The respondents are individuals who allege discrimination on the grounds described above.

Number of Respondents: 300.

Frequency of Response: 1.

Average Burden Per Response: 1 hour.

Estimated Annual Burden: 300 hours.

7. Claimant's Statement When Request for Hearing is Filed and the Issue is Disability—0960–0316. SSA requests that a claimant complete an HA–4486 when a claim for title II disability benefits or title XVI Supplemental Security Income benefits is denied and the claimant wishes a hearing before an Administrative Law Judge (ALJ). SSA uses this form to obtain updated information on the claimant's medical treatment to assist the ALJ in preparing for the hearing and in issuing a decision on entitlement to benefits. The respondents are individuals whose claims have been denied and who want a hearing before an ALJ.

Number of Respondents: 442,720.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 110,680.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. National Teacher Questionnaire (SSA–5665–BK), and Information About the Working Age Child (SSA–5665–SUPP)—0960–New. The information collected on forms SSA–5665–BK and SSA–5665–Sup is used by the Social Security Administration (SSA) and the State Disability Determination Services (DDS) to obtain descriptions of children claiming SSI benefits based on disability and their ability to function on a daily basis. The forms will be used for initial determinations of eligibility, in appeals

and in initial continuing disability reviews.

These forms are being developed because the forms currently used by the DDSs vary in format and content. It was decided that for the sake of a uniform national childhood program (and with this information in hand and the sensitivity of this population), the time has come for a National Teacher Questionnaire and Information About the Working Age Child. The respondents are the educational community and small businesses that educate and/or employ applicants for Supplemental Security Income for the aged, blind, and Disabled.

	SSA–5665–BK	SSA–5665–Sup
Number of Respondents	475,000	125,000
Frequency of Response	1	1
Average Burden Per Response (minutes)	15–20	5–10
Estimated Annual Burden (hours)	158,333	20,833

2. Beneficiary Recontact Report—0960–0536. SSA collects the information on Form SSA–1587 to ensure that eligibility for benefits continues after entitlement is established. SSA asks children ages 15, 16, and 17 information about marital status to detect overpayments and avoid continuing payment to those no longer entitled. Studies show that children who marry fail to report the marriage, which is a terminating event. The respondents are applicants for Title II (Old-Age, Survivors and Disability Insurance) Children/Beneficiaries who are ages 15, 16, and 17.

Number of Respondents: 982,357.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 49,118 hours.

3. Questionnaire About Employment or Self-Employment Outside the United States, 0960–0050. This information is used by SSA to determine whether work performed by beneficiaries outside the United States (U.S.) is cause for deductions from their monthly benefits; to determine which of two work tests (foreign or regular) is applicable; and to determine the months, if any, for which deductions should be imposed. The respondents are beneficiaries living and working outside the U.S.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden Per Response: 12 minutes.

Estimated Annual Burden: 4,000 hours.

(SSA Address)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

(OMB Address)

Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20503.

Date: November 22, 2000.

Elizabeth A. Davidson,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 00–30403 Filed 11–28–00; 8:45 am]

BILLING CODE 4191–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Comments on Proposed United States-Singapore Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of intent to conduct negotiations, initiation of environmental review, and request for comments.

SUMMARY: This publication gives notice that the United States intends to conduct negotiations with the Republic of Singapore to conclude a free trade agreement. The Trade Policy Staff Committee (TPSC) is requesting written comments from the public to assist the United States Trade Representative (USTR) in formulating negotiating objectives for the agreement and to provide advice on how specific goods and services and other matters should be treated under the agreement. This publication also provides notice that, pursuant to Executive Order 13141 (64 FR 63169), USTR, through the TPSC, is initiating an environmental review of the agreement.

The TPSC is requesting written comments from the public on what should be included in the scope of the environmental review, including the potential environmental effects that might flow from the free trade agreement and the potential implications for our environmental laws and regulations. Persons submitting written comments should provide as much detail as possible on the degree to which the subject matter they propose for inclusion in the review may raise significant environmental issues in the context of the negotiation.

DATES: Public comments should be received by noon, December 19, 2000.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 600 17th Street, NW., Washington, DC 20508 (202) 395–3475. All questions regarding the environmental review should be addressed to Mary Latimer, Deputy Assistant US Trade Representative for Environment and Natural Resources, Office of the USTR (202) 395–7320. All other questions regarding the negotiations should be addressed to Barbara Weisel, Deputy Assistant US Trade Representative for Bilateral Asian Affairs, Office of the USTR (202) 395–6813.

SUPPLEMENTARY INFORMATION: On November 16, 2000, President Clinton agreed with Singapore's Prime Minister Goh Chok Tong to negotiate a bilateral free trade agreement. In the negotiations, the United States and Singapore will seek to eliminate duties and commercial barriers to bilateral trade in U.S.- and Singaporean-origin goods and also expect to address trade in services, investment, trade-related aspects of intellectual property rights, trade-related environmental and labor matters, and other issues. Two-way trade between the United States and Singapore totaled $34.4 billion in 1999. The free trade agreement will be modeled upon the recently signed free trade agreement between Jordan and the United States, but will recognize the substantial volume of trade between Singapore and the United States. USTR is requesting that the U.S. International Trade Commission conduct a study of the potential economic impacts of the free trade agreement.

USTR, through the TPSC, will perform an environmental review of the

agreement pursuant to Executive Order 13141, 64 FR 63169.

Written comments with as much specificity as possible, including data, views and recommendations, are invited on:

(a) General and commodity-specific negotiating objectives for the agreement.

(b) Economic costs and benefits to U.S. producers and consumers of removal of tariffs and non-tariff barriers to U.S.-Singapore trade.

(c) Treatment of specific goods (described by Harmonized System tariff numbers) under the agreement, including comments on (1) product specific import or export interests or barriers, (2) experience with particular measures that should be addressed in the negotiations, and (3) in the case of articles for which immediate elimination of tariffs is not appropriate, recommended staging schedule for such elimination.

(d) Adequacy of existing customs measures to ensure Singaporean origin of imported goods, and appropriate rules of origin for goods entering the United States under the agreement.

(e) Proposals for service sectors to be addressed in the agreement, existing barriers to trade in those sectors, and economic costs and benefits of removing such barriers.

(f) Relevant trade-related intellectual property rights issues that should be addressed in the negotiations.

(g) Relevant investment issues that should be addressed in the negotiations.

(h) Relevant environmental and labor issues that should be addressed in the negotiations.

(i) Possible environmental effects of the agreement and the scope of the U.S. environmental review of the agreement.

Comments identifying as present or potential trade barriers laws or regulations that are not primarily trade-related should address the economic, political and social objectives of such regulations and the degree to which they discriminate against producers of the other country. Comments on the scope of the environmental review should be as detailed as possible.

Written Comments

Persons submitting written comments should provide twenty (20) copies no later than noon, December 19, 2000, to Gloria Blue at address listed above. If possible, comments should be submitted before this date. Where possible, please supplement written comments with a computer disk of the submission containing as much of the technical details as possible either in spreadsheet or word processing table format, with each tariff line/services sector in a separate cell. The disk should have a label identifying the software used and the submitter.

Written comments submitted in connection with this request, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room (Room 101) at the address noted above. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The Reading Room is open to the public from 10:00 a.m. to 12 noon, and from 1 p.m. to 4 p.m. Monday through Friday.

Business confidential information, including any information submitted on disks, will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof. If the submission contains business confidential information, twenty copies of a public version that does not contain confidential information, must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked ''Confidential'' at the top and bottom of the cover page (or letter) and each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''non-confidential.''

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 00–30386 Filed 11–28–00; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

DATES: The meeting will be held on December 13, 2000, at 10:00 a.m.

ADDRESSES: The meeting will be held in Conference Room 827, Federal Office Building 10A (the ''FAA Building''), 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9685.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee on Air Carrier Operations to be held on December 13, 2000.

The agenda will include:

- Airplane Performance Working Group status report.
- Extended Range Operations with Two-Engine Aircraft (ETOPS) Working (ETOPS) Working Group status report.
- Consideration of a proposed task to review proposed Advisory Circular 120–29A, Criteria for Approval of Nonprecision, Category I and Category II Weather Minima for Takeoff, Approach and Landing and all associated comments received during the public comment period.

Attendance is open to the interested public but may be limited by the space available. Members of the public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

If you are in need of assistance or require a reasonable accommodation for this event, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on November 27, 2000.

Gregory L. Michael,

Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 00–30494 Filed 11–28–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notion of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Craig Airport, Jacksonville, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Craig Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 29, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida, 32822–5024.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to John D. Clark, III, Vice President of Aviation, of the Jacksonville Port Authority at the following address: Jacksonville Port Authority, Post Office Box 3005, Jacksonville, Florida, 32206–0005.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Jacksonville Port Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Richard M. Owen, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida, 32822–5024, (407) 812–6331, extension 19. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Craig Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 19, 2000, the FAA determined that the application to use the revenue from a PFC submitted by Jacksonville Port Authority was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 3, 2001.

The following is a brief overview of the application.

PFC Application No.: 01–06–U–00–JAX.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 1996.

Proposed charge expiration date: June 1, 1999.

Total estimated net PFC revenue: $5,584,454.

Brief description of proposed project(s): Taxiway improvements for Runways 5–23 and 14–32, including additional connector taxiways and run-up pads.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/commercial operators filing or required to file FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Jacksonville Port Authority.

Issued in Orlando, Florida on November 22, 2000.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 00–30427 Filed 11–28–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Louisville International Airport, Louisville, Kentucky

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Louisville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 29, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 3385 Airways Boulevard, Suite 302, Memphis, Tennessee 38116–3841.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James C. DeLong, General Manager of the Regional Airport Authority of Louisville and Jefferson County at the following address: P.O. Box 9129, Louisville, Kentucky 40229

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Regional Airport Authority of Louisville and Jefferson County under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry O. Bowers, Program Manager, Memphis Airports District Office, 3385 Airways Boulevard, Suite 302, Memphis, Tennessee 38116–3841, 901–544–3495, Extension 21. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Louisville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 21, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Regional Airport Authority of Louisville and Jefferson County was substantially complete within the requirements of § 158,25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 14, 2001.

The following is a brief overview of the application.

PFC Application No.: 01–02–C–00–SDF.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2015.

Proposed charge expiration date: April 1, 2018.

Total estimated net PFC revenue: $16,398,940.

Brief description of proposed project(s): Construct West Airfield Perimeter Roads, Acquire a Flight Track Monitoring System, Construct New Aircraft Rescue and Fire Fighting Building, Construct Passenger Terminal

Modifications, Construct Charter Terminal/Customs Facility through rehabilitation of an existing passenger terminal facility, and Rehabilitate Northeast Terminal Apron (at proposed Charter/Customs Facility).

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/commercial operator (ATCO), certified air carriers (CAC), and certified route air carriers (CRAC) having fewer than 500 annual enplanements.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Regional Airport Authority of Louisville and Jefferson County.

Issued in Memphis, Tennessee on November 22, 2000.

LaVerne F. Reid,

Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 00–30428 Filed 11–28–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR) § 211.41, and 49 U.S.C. 20103, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance with certain requirements of the Federal railroad safety regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being sought.

Sound Transit

[Waiver Petition Docket Number FRA–2000–8266]

Sound Transit seeks a permanent waiver of compliance from certain sections of Title 49 of the CFR for operation of a new ''Tacoma Line'' light rail line at a ''limited connection'' with The Burlington Northen and Santa Fe Railway Company (BNSF). Sound Transit is building the Tacoma Link, which will intersect the BNSF Prairie Line at a rail crossing located in the City of Tacoma, Washington. The Tacoma Line will be within a highway at the rail grade crossing.

Sound Transit seeks relief based on the safety precautions already in place at the crossing. Specifically, BNSF is subject to FRA's regulations and maintains and operates the rail crossing for the proposed project. Sound Transit specifically requests a waiver from the Passenger Equipment Safety Standards (49 CFR part 238), as Tacoma Link is a light rail transit operation except for the minor crossing connection. Sound Transit also states that the requirements for its light rail vehicles should be considered as similar to buses, autos, and all other street vehicles, wherein efforts are put into having warning equipment and procedures to reduce the probability and severity of an accident. See *Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment*, 65 FR 42529 (July 10, 2000). See also *Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems*, 65 FR 42626 (July 10, 2000).

Since FRA has not yet concluded its investigation of the Tacoma Link, the agency takes no position at this time on the merits of Sound Transit's stated justifications.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with the request for a waiver of certain regulatory provisions. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA 2000–8266) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza level) 400 Seventh Street, SW., Washington, DC 20590. All documents in the public docket, including Sound Transit's detailed waiver request, are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility.

Issued in Washington, DC on November 21, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–30431 Filed 11–28–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Public Hearing; The Union Pacific Railroad (Docket Number 2000–7912)

The Union Pacific Railroad (UP) has petitioned the Federal Railroad Administration (FRA) seeking a waiver of compliance with the requirements of 49 CFR 214.329. UP requests relief that will permit the use of a system described by UP as the automatic train approach warning system (TAWS). UP proposes that roadway work groups be permitted to substitute TAWS for watchmen/lookouts as the method of train approach warning when fouling a track within equipped interlockings and controlled points. UP also proposes that lone workers be permitted to use TAWS as a method of train approach warning within the limits of those interlockings and controlled points without a requirement to establish working limits. Technical details of the TAWS system, its developmental history, and its function were described in the **Federal Register** notice cited in the following sentence.

The FRA issued a public notice (65 FR 57237, September 21, 2000) seeking comments of interested parties. After examining the railroad's proposal and the available facts, FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 9 a.m. CST, on Thursday, January 4, 2001, in Room 102–A (first floor) of the Peter Kiewit Building, 1313 Farnam Street, Omaha, Nebraska. Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (Title 49 CFR Part 211.25), by a representative designated by the FRA.

Issued in Washington, DC on November 21, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–30430 Filed 11–28–00; 8:45 am]

BILLING CODE 4910–06–P

Corrections

Federal Register
Vol. 65, No. 230
Wednesday, November 29, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Docket No. FV00–946–1 IFR]

Irish Potatoes Grown in Washington; Exemption From Handling and Assessment Regulations for Potatoes Shipped for Experimental Purposes

Correction

In rule document 00–29944 beginning on page 70461 in the issue of Friday, November 24, 2000, make the following correction:

§946.336 [Corrected]

On page 70463, in the third column, in §946.336, in the seventh line from the bottom, paragraph ''(a)'' should read ''(e)''.

[FR Doc. C0–29944 Filed 11–28–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Wednesday,
November 29, 2000

Part II

Department of Housing and Urban Development

24 CFR Part 943
Consortia of Public Housing Agencies and Joint Ventures; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 943

[Docket No. FR–4474–F–02]

RIN 2577–AC00

Consortia of Public Housing Agencies and Joint Ventures

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements a 1998 law that authorizes public housing agencies (PHAs) to administer any or all of their housing programs through a consortium of PHAs. The law also authorizes PHAs to use subsidiaries, joint ventures, partnerships or other business arrangements to administer their housing programs or to provide supportive or social services. This final rule specifies minimum requirements relating to formation and operation of consortia and minimum contents of consortium agreements, as required by the statute and reflects consideration of public comments received on the proposed rule.

EFFECTIVE DATE: December 29, 2000.

FOR FURTHER INFORMATION CONTACT: Rod Solomon, Deputy Assistant Secretary for Policy, Program and Legislative Initiatives, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW, Room 4116, Washington, DC 20410; telephone (202) 708–0713 (this is not a toll-free telephone number). Persons with hearing or speech disabilities may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. The September 14, 1999 Proposed Rule

On September 14, 1999 (64 FR 49940), HUD published for public comment a proposed rule implementing section 13 of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (referred to as the ''1937 Act''), as amended by section 515 of the Quality Housing and Work Responsibility Act of 1998 (title V of the fiscal year 1999 HUD Appropriations Act; Pub. L. 105–276, approved October 21, 1998; 112 Stat. 2461) (referred to as the ''Public Housing Reform Act'').

In addition to authorizing public housing agencies (PHAs) to administer any or all of their housing programs through a consortium of PHAs, section 13 of the 1937 Act also authorizes PHAs to use subsidiaries, joint ventures, partnerships or other business arrangements to administer their housing programs or to provide supportive or social services. The proposed rule specified minimum requirements relating to formation and operation of consortia and minimum contents of consortium agreements, as required by the statute.

Before enactment of the Public Housing Reform Act, some PHAs had established cooperative arrangements for carrying out some of their responsibilities. A principal difference is that under a section 13 consortium, a joint PHA Plan is submitted on behalf of participating PHAs. Enactment of the revised section 13, however, does not restrict the ability of PHAs to continue to establish cooperative arrangements under which they receive funding separately and submit separate PHA Plans. Another major difference between such arrangements and consortia as authorized under section 13, is that under section 13 funding must be paid to the consortium. HUD is implementing this requirement by providing that funds shall be directed to the lead agency, as a representative of the consortium, on behalf of the participating PHAs, instead of being paid to the PHAs separately (although funding allocations are still calculated separately for each PHA).

The preamble to the September 14, 1999 proposed rule provides additional information regarding the proposed implementation of section 13 of the 1937 Act, as revised.

II. Changes Made at the Final Rule Stages

The following describes the more significant changes made to this rule at the final rule stage. In addition to the changes discussed below, certain technical and clarifying changes were made at the final rule stage. Some of the nonsubstantive changes, but not necessarily all, may be noted below. The more significant changes are as follows:

- In § 943.118 (What is a consortium?), HUD adds language at the end of this section to require that PHAs participating in a consortium adopt the same fiscal year in order that the applicable periods for submission and review of the joint PHA Plan are the same and to indicate that notwithstanding any other regulation, PHAs may request and HUD may approve changes in PHA fiscal years to make this possible.
- In § 943.120 (What programs of a PHA are included in a consortium's functions), HUD revises paragraph (a)(1) to clarify that a PHA's public housing program may include either the operating fund or the capital fund, or both). In paragraph (a)(4) of this same section, HUD removes reference to the exception made for ''Moderate Rehabilitation and Certificates and Vouchers.
- In § 943.122 (How is a consortium organized?), HUD revises paragraph to clarify that any necessary payment agreements entered into between HUD and the lead agency and other participating agencies must provide that HUD funding to the participating PHAs for program categories covered by the consortium will be paid to the lead agency. This payment arrangement is consistent with the requirements of the Public Housing Reform Act. HUD revises paragraph (b) to provide that to be the lead agency in a consortium, not only must a PHA not be designated as troubled, or determined by HUD to fail the civil rights compliance threshold for new funding, the PHA must not have had its PHAS designation withheld for civil rights or other reasons.
- In § 943.124 (What elements must a consortium agreement contain?), HUD revises paragraph (a)(5) to provide that the consortium agreement must not only specify the period of existence of the consortium and the terms under which a PHA may withdraw from the consortium before the end of the period of existence, but must specify when a PHA may join the consortium. This paragraph also was revised to provide that, for orderly transition, the addition or withdrawal of a PHA and termination of the consortium must take effect on the anniversary of the consortium's fiscal year.
- In § 943.126 (What is the relationship between HUD and a consortium?), HUD removes paragraph (b) which provided that HUD's payment to the consortium of funding for the covered program categories covered will be paid to the lead agency. This paragraph was duplicative of § 943.122, which addresses consortium organization. HUD revises paragraph (a) by removing the ''(a)'' as the designation for this paragraph and by clarifying that HUD's relationship with the consortium is through the PHA Plan process, in addition to the payment agreements entered into. HUD also revises this paragraph to clarify that HUD funds provided to the consortium must be used in accordance with the consortium agreement and the joint PHA Plan, in addition to HUD's regulations and requirements.
- In § 943.128 (How does a consortium carry out planning and reporting functions?), HUD revises paragraph (b) to clarify that the consortium must maintain records, in

addition to submitting certain reports to HUD. HUD revises paragraph (c) to require that the consortium agreement must be made available to the public as a supporting document to the joint PHA Plan.

• In § 943.130 (What are the responsibilities of participating PHAs?), HUD adds a new paragraph (b) to address the applicability of independent audit and performance assessment system requirements to consortia and to note that the manner of applicability depends upon the composition and funding of the PHA. The new paragraph provides that where the lead agency will manage substantially all program and activities of the consortium, HUD interprets financial accountability to rest with the consortium and therefore apply independent and performance assessment requirements on a consortium-wide basis. Where the lead agency will not manage substantially all programs and activities of a consortium, the consortium must identify in its PHA Plan submission which PHAs have financial accountability for the programs. The determination of financial accountability shall be made in accordance with generally accepted accounting principles, as determined in consultation with an independent public accountant. This paragraph also provides, however, that with respect to any consortium, HUD may determine (based on a request from the consortium or other circumstances) to apply independent audit and performance requirements on a different basis (than that provided in the rule) where a different basis would promote sound management.

• In § 943.140 (What programs and activities are covered by this subpart?), HUD revises paragraph (a) to clarify that subpart C applies to a PHA's management functions as well as the PHA's administrative functions.

• In § 943.146 (What impact does the use of a subsidiary affiliate, or joint venture have on financial accountability to HUD and the Federal government?), HUD replaces the term ''General Accounting Office'' with ''Comptroller General,'' which is consistent with statutory terminology.

• In § 943.148 (What procurement standards apply to PHAs selecting partners for a joint venture?), HUD revises paragraph (a) to clarify that the requirements of 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments) are applicable to the regulations in part 943, subject to the provisions in paragraph (b) of this section. HUD revises paragraph (b)(2) of this same section, to reference the applicability of the requirements of 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Agencies).

In § 943.150 (What procurement standards apply to a PHA's joint venture partner?), HUD revises paragraph (a) to include reference to the applicability of part 84.

III. Discussion of Public Comments Received on the Proposed Rule

This final rule takes into consideration the public comments received on the September 14, 1999 proposed rule. The public comment period on the proposed rule closed on November 15, 1999. By close of business on that date, HUD had received 6 public comments. Comments were submitted by two PHAs; two of the three main organizations representing PHAs; a State PHA association; and a private individual. This section of the preamble presents a summary of the significant issues raised by the public commenters on the September 14, 1999 proposed rule and HUD's responses to these comments, and provides the basis why certain changes, as highlighted in Section II of this preamble, were made at the final rule stage. The changes benefit both from the comments received during the public comment period and from comments and questions that have arisen since the comment period closed from PHAs and others interested in forming consortia or joint ventures, as provided by this rule.

A. General Comments Not Regarding a Particular Regulatory Section

Comment: Rule is unclear regarding the relationship between PHA consortia and formula funding under PHDEP. One commenter posed several questions regarding the relationship between PHA consortia and formula funding under the Public Housing Drug Elimination Program (PHDEP). The commenter referred to HUD's September 14, 1999 final rule (64 FR 49900) providing for PHDEP formula allocations. The commenter wrote that the September 14, 1999 final rule provides that certain grantees who received past funding will automatically receive PHDEP funding for Fiscal Year (FY) 1999, provided that the grantee's grant application demonstrates positive program outcomes. The commenter was concerned about those PHAs that are not eligible for automatic FY 1999 PHDEP funding.

The commenter asked the following questions:

1. Will such a PHA be able to join a consortium of other PHAs that continuously receive PHDEP assistance?

2. Will the PHA be required to become a PHDEP grantee before joining such a consortium?

3. May a PHA that was not awarded PHDEP assistance conduct drug-elimination activities subsidized by other PHAs who have received PHDEP funding?

HUD Response. Yes, a PHA not eligible for automatic PHDEP funding may join a consortium with other PHAs that do receive PHDEP assistance, without becoming a PHDEP grantee itself first. A PHA that was not awarded PHDEP assistance and is part of a consortium with PHAs that were awarded PHDEP assistance may conduct drug elimination activities using that assistance.

Comment: Rule is unclear regarding real estate transactions and development/acquisition and redevelopment. One commenter wrote that it had hoped ''that these types of development activities would be highlighted in the proposed rule and encouraged by HUD.''

HUD Response. HUD encourages PHAs to use the consortium and joint venture options as broadly as possible to advance their mission, including using them for capital planning and development. However, HUD also believes that any public housing development activities involving joint ventures are more appropriately addressed in HUD's Mixed-Finance Development rule or Capital Fund rule, to be issued later this year.

Comment: Further HUD guidance is required. One commenter wrote that the ''statute and the proposed rule assume a level of experience or sophistication which may not be universal among the PHAs.'' The commenter wrote that ''it would be most useful [for HUD] to prepare some form of policy guide or 'how to' that would direct the energies of potential members in a productive way.'' The commenter recommended that HUD provide guidance in the question and answer format, with ''examples with different sizes of PHAs and different sets of consortia objectives that have successfully used the strategy.''

Comment: Rule provides sufficient guidance. In contrast to the preceding comment, one commenter wrote that ''sufficient regulatory guidance has been provided and that remaining planning and operational issues should be left for [P]HAs to develop through their agency planning process and partnership agreements.'' The commenter believes that the provisions of the proposed rule

''effectively outline the basic framework and submission process for [P]HAs that opt to form a consortium or joint venture.''

HUD Response. The rule provides the basic regulatory framework. HUD will explore issuing additional guidance to supplement the rule.

B. Comment regarding proposed § 943.115—What programs are covered under this subpart?

Comment: Final rule should cover all categories of Section 8 projects. Section 943.115 of the proposed rule provided that two types of Section 8 projects are not covered by the regulatory provisions governing consortia:

1. PHA-administered project-based Section 8 under the Request for Proposals published on May 19, 1999 (64 FR 27358); and

2. Section 8 projects that are the subject of financial restructuring under the ''Mark to Market'' program, where Participating Administrative Entities are designated to administer the program (see 42 U.S.C. 1437f note).

One commenter objected to these exclusions, writing that ''[a]ny consortium made up of public agencies should be treated corporately as a public agency itself.''

HUD Response. Neither of these categories is covered by the PHA Plan, which is why they were excluded in the September 14, 1999 proposed rule. The PHA Plan is the vehicle for PHAs to combine their planning and reporting, and this rule addresses only those entities and activities covered by a PHA Plan. HUD, therefore, makes no change in response to this comment.

C. Comment regarding proposed § 943.120—What programs of a PHA are included in a consortium's functions?

Comment: Final rule should authorize a PHA to enter more than one consortium for a program category. Section 943.120(b) of the proposed rule provided that ''[i]f a PHA elects to enter a consortium with respect to a program category * * * the consortium must cover the PHA's whole program under the [Annual Contributions Contract (ACC)] with HUD for that program category.'' One commenter—the PHA for the State of Hawaii—objected to this provision. The commenter wrote that in addition to the administration of its state-wide program, it administers a relatively large Section 8 tenant-based program for the City and County of Honolulu. The PHA also administers separate, and smaller, Section 8 programs for neighboring counties. According to the commenter, each county also administers separate Section 8 certificate and voucher programs. The PHA wrote that it would like to continue to administer the Section 8 program for Honolulu, while forming a separate consortium to administer the smaller programs on each of the neighbor island counties. However, under proposed § 943.120(b), the PHA stated it would be prevented from taking this course of action.

HUD Response. A joint PHA Plan covering an entire program category is an essential element of a consortium. If HUD were to allow a PHA to participate in more than one consortium for the same program category, there would be overlapping PHA Plans for the same program, and as many or more PHA Plans rather than fewer. Program administration would not be simplified. Consequently, the final rule continues to provide that a PHA may not be a member of two different consortia for the same program. However, the proposed rule and this final rule still leave room for a PHA or a consortium to contract with another PHA to administer some or all aspects of a Section 8 program. The PHA performing these functions under contract need not be a member of a consortium with the PHA whose program it is administering. In addition, HUD will work with agencies that encounter problems in determining how to combine functions where a consortium under this rule does not seem to be the proper mechanism.

D. Comment regarding proposed § 943.124—What elements must a consortium agreement contain?

Comment: Consortium agreement should provide for PHAs joining consortium after establishment. One commenter wrote that the final rule should require the inclusion of a provision in the consortium agreement providing for (or prohibiting) a new PHA joining the consortium after its establishment.

HUD Response. Section 943.124 was revised in the final rule to include the requested provision.

E. Comment regarding proposed § 943.128—How does a consortium carry out planning and reporting functions?

Comment: Final rule should provide flexibility regarding the reporting requirements. Section 943.128 of the proposed rule provided for reporting to HUD, in accordance with HUD regulations and requirements, for all of the participating PHAs. The preamble to the proposed rule solicited public comment on whether all reports should be combined reports (see 64 FR 49940, third column). One commenter wrote that, absent an explanation of what is meant by ''all reports'', the question is difficult to answer. However, the commenter recommended that ''reporting requirements should be met in whatever way seems best for the consortium and its individual members, so long as [HUD] gets the data it needs.''

HUD Response. The scope of planning and reporting by the consortium must reflect the scope of consortium activities. PHAs should be aware that funding allocations for the Operating Fund and Capital Fund will continue to be calculated separately for each PHA in a consortium. In addition, as noted in Section II of this preamble, how independent audit and performance assessment requirements apply to PHAs in a consortium depends upon the composition and funding of participating PHAs. HUD's intention, with respect to applicability of independent audit and performance assessment of PHAs in a consortium, is that a consortium composed entirely of PHAs that are not designated as troubled and for which the lead agency has assumed all public housing administration and management functions would be treated as one entity for purposes of independent and audit performance assessment requirements of the participating PHAs. However, the rule also provides HUD with the flexibility to select or approve alternative approaches to applying independent audit and performance assessment requirements where such alternative approaches would promote sound management.

F. Comment regarding proposed § 943.148—What procurement standards apply to PHAs selecting partners for a joint venture?

Comment: Final rule should not apply procurement requirements to selection of an affiliate as a joint venture partner. Section 943.148(a) of the proposed rule provided that the procurement requirements of 24 CFR part 85 are generally applicable to a PHA's procurement of goods and services. Section 943.148(b) of the proposed rule permitted qualifications based on sole source procurement for PHA selection of a joint venture partner without making a distinction between selection of an affiliated or non-affiliated entity. Section 943.148(b) permitted such a selection of a joint venture partner if one of two conditions is met:

1. The joint venture partner will make available to the PHA substantial, unique and tangible resources or other benefits that would not otherwise be available to the PHA on the open market (*e.g.*,

planning expertise, program experience, or financial or other resources); or

2. A resident group or a PHA subsidiary is willing and able to act as the PHA's partner in performing administrative functions or to provide supportive or social services.

One commenter wrote that, by treating a PHA's decision to operate through an affiliate as a procurement action, the proposed rule ''detracts from the benefit to the PHA of utilizing the associated entity.'' The commenter wrote that new section 13 of the 1937 Act ''appears to evidence Congress' opinion that PHAs need the ability to operate through whatever organizational structure is most suitable in light of the specific objectives sought to be accomplished, without fear that such operation will be clouded by intimations that such relationships are somehow improper or inappropriate vehicles.''

The commenter stated that it does not believe that the ''sole source exception'' provided in proposed § 943.148(b) adequately addresses this problem. According to the commenter, the first standard ''provides little help in the PHA/affiliate context'' because the ''PHA affiliate will usually offer to the PHA only another form with which to accomplish its objectives, with perhaps the same staff and resources the PHA already has.'' The commenter also objected to the second standard because ''there are many functions'' (such as real estate acquisition) that cannot be categorized as administrative functions or supportive/social services.

HUD Response. The commenter interprets the rule to require a PHA to follow part 85 in its transactions with a subsidiary or affiliate, while that is not its intent. Rather, the rule creates an exception to part 85 procurement procedures in selection of its joint venture partner. The rule creates an ability to make this selection under streamlined procedures—either through a Request for Qualifications or a sole source procurement.

With respect to the functions that are covered by subpart C, the rule has been revised at this final rule stage to clarify that the functions covered include management functions. It does not apply to activities of a PHA that are subject to the requirements of subpart F of Part 941. This section also has been revised at the final rule stage to clarify that the requirements of 24 CFR part 84 also may be applicable.

IV. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in §§ 943.124, 943.126, and 943.128 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2577–0235. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Impact on Small Entities

The Secretary has reviewed this final rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities. Based on HUD's experience and contacts with representatives of PHAs and HUD field offices, HUD expects a relatively small number of PHAs to form consortia—certainly fewer than 100. While there would be savings and efficiencies in the long run for small PHAs, forming a consortium also would require some work for these PHAs—to enter consortium agreements—and would require them to overcome resistance to giving up local control of their programs. Consequently, HUD concludes that this final rule will not have a significant impact on a substantial number of small entities.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). Since the changes to the proposed rule are minor, that Finding remains applicable to this final rule and is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Regulatory Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, entitled ''Regulatory Planning and Review.'' OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the Regulations Division of the Office of General Counsel, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the program affected by this rule are 14.850, 14.855, and 14.857.

List of Subjects in 24 CFR Part 943

Low and moderate income housing, Reporting and recordkeeping requirements.

Accordingly, HUD adds a new part 943 to title 24 of the Code of Federal Regulations to read as follows:

PART 943—PUBLIC HOUSING AGENCY CONSORTIA AND JOINT VENTURES

Subpart A—General

Sec.
943.100 What is the purpose of this part?

Subpart B—Consortia

943.115 What programs are covered under this subpart?
943.118 What is a consortium?

Authority: 42 U.S.C. 1437k and 3535(d).

Subpart A—General

§ 943.100 What is the purpose of this part?

This part authorizes public housing agencies (PHAs) to form consortia, joint ventures, affiliates, subsidiaries, partnerships, and other business arrangements under section 13 of the United States Housing Act of 1937 (42 U.S.C. 1437k). Under this authority, PHAs participating in a consortium enter into a consortium agreement, submit joint PHA Plans to HUD, and may combine all or part of their funding and program administration. This part does not preclude a PHA from entering cooperative arrangements to operate its programs under other authority, as long as they are consistent with other program regulations and requirements.

Subpart B—Consortia

§ 943.115 What programs are covered under this subpart?

(a) Except as provided in paragraph (b) of this section, this subpart applies to the following:

(1) PHA administration of public housing or Section 8 programs under an Annual Contributions Contract (ACC) with HUD; and

(2) PHA administration of grants to the PHA in connection with its public housing or Section 8 programs.

(b) This subpart does not apply to the following:

(1) PHA administration of Section 8 projects assigned to a PHA for contract administration pursuant to an ACC entered under the Request for Proposals (RFP) published May 19, 1999 (64 FR 27358);

(2) Section 8 contract administration of a restructured subsidized multifamily project by a Participating Administrative Entity in accordance with part 401 of this title; or

(3) A PHA in its capacity as owner of a Section 8 project.

§ 943.118 What is a consortium?

A consortium consists of two or more PHAs that join together to perform planning, reporting, and other administrative or management functions for participating PHAs, as specified in a consortium agreement. A consortium also submits a joint PHA Plan. The lead agency collects the assistance funds from HUD that would be paid to the participating PHAs for the elements of their operations that are administered by the consortium and allocates them according to the consortium agreement. The participating PHAs must adopt the same fiscal year so that the applicable periods for submission and review of the joint PHA Plan are the same. Notwithstanding any other regulation, PHAs proposing to form consortia may request and HUD may approve changes in PHA fiscal years to make this possible.

§ 943.120 What programs of a PHA are included in a consortium's functions?

(a) A PHA may enter a consortium under this subpart for administration of any of the following program categories:

(1) The PHA's public housing program (which may include either the operating fund or the capital fund, or both);

(2) The PHA's Section 8 voucher and certificate program (including the project-based certificate and voucher programs and special housing types);

(3) The PHA's Section 8 Moderate Rehabilitation program, including Single Room Occupancy program;

(4) All other project-based Section 8 programs administered by the PHA under an ACC with HUD; and

(5) Any grant programs of the PHA in connection with its Section 8 or public housing programs, such as the Drug Elimination program or the Resident Opportunities and Self-Sufficiency program, to the extent not inconsistent with the terms of the governing documents for the grant program's funding source.

(b) If a PHA elects to enter a consortium with respect to a category specified in paragraph (a) of this section, the consortium must cover the PHA's whole program under the ACC with HUD for that category, including all dwelling units and all funding for that program under the ACC with HUD.

§ 943.122 How is a consortium organized?

(a) PHAs that elect to form a consortium enter into a consortium agreement among the participating PHAs, specifying a lead agency (see § 943.124), and submit a joint PHA Plan (§ 943.118). HUD enters into any necessary payment agreements with the lead agency and the other participating PHAs (see § 943.126) to provide that HUD funding to the participating PHAs for program categories covered by the consortium will be paid to the lead agency.

(b) The lead agency must not be a PHA that is designated as a ''troubled PHA'' by HUD, that has been determined by HUD to fail the civil rights compliance threshold for new funding, or that has had a PHAS designation withheld for civil rights or other reasons. The lead agency is designated to receive HUD program payments on behalf of participating PHAs, to administer HUD requirements for administration of the funds, and to apply the funds in accordance with the consortium agreement and HUD regulations and requirements.

§ 943.124 What elements must a consortium agreement contain?

(a) The consortium agreement among the participating PHAs governs the formation and operation of the consortium. The consortium agreement must be consistent with any payment agreements between the participating PHAs and HUD and must specify the following:

(1) The names of the participating PHAs and the program categories each PHA is including under the consortium agreement;

(2) The name of the lead agency;

(3) The functions to be performed by the lead agency and the other participating PHAs during the term of the consortium;

(4) The allocation of funds among participating PHAs and responsibility for administration of funds paid to the consortium; and

(5) The period of existence of the consortium and the terms under which a PHA may join or withdraw from the consortium before the end of that period. To provide for orderly transition, addition or withdrawal of a PHA and termination of the consortium must take effect on the anniversary of the consortium's fiscal year.

(b) The agreement must acknowledge that the participating PHAs are subject to the joint PHA Plan submitted by the lead agency.

(c) The agreement must be signed by an authorized representative of each participating PHA.

§ 943.126 What is the relationship between HUD and a consortium?

HUD has a direct relationship with the consortium through the PHA Plan process and through one or more payment agreements, executed in a form prescribed by HUD, under which HUD and the participating PHAs agree that program funds will be paid to the lead agency on behalf of the participating PHAs. Such funds must be used in accordance with the consortium agreement, the joint PHA Plan and HUD regulations and requirements.

§ 943.128 How does a consortium carry out planning and reporting functions?

(a) During the term of the consortium agreement, the consortium must submit joint five-year Plans and joint Annual Plans for all participating PHAs, in accordance with part 903 of this chapter. HUD may prescribe methods of submission for consortia generally and where the consortium does not cover all program categories.

(b) The consortium must maintain records and submit reports to HUD, in accordance with HUD regulations and requirements, for all of the participating PHAs. All PHAs will be bound by Plans and reports submitted to HUD by the consortium for programs covered by the consortium.

(c) Each PHA must keep a copy of the consortium agreement on file for inspection. The consortium agreement must also be a supporting document to the joint PHA Plan.

§ 943.130 What are the responsibilities of participating PHAs?

(a) *Responsibilities, generally.* Despite participation in a consortium, each participating PHA remains responsible for its own obligations under its ACC with HUD. This means that the PHA has an obligation to assure that all program funds, including funds paid to the lead agency for administration by the consortium, are used in accordance with HUD regulations and requirements, and that the PHA program is administered in accordance with HUD regulations and requirements. Any breach of program requirements with respect to a program covered by the consortium agreement is a breach of the ACC with each of the participating PHAs, so each PHA is responsible for the performance of the consortium.

(b) *Applicability of independent audit and performance assessment system requirements to consortia.* Where the lead agency will manage substantially all program and activities of the consortium, HUD interprets financial accountability to rest with the consortium and thus HUD will apply independent audit and performance assessment requirements on a consortium-wide basis. Where the lead agency will not manage substantially all programs and activities of a consortium, the consortium shall indicate in its PHA Plan submission which PHAs have financial accountability for the programs. The determination of financial accountability shall be made in accordance with generally accepted accounting principles, as determined in consultation with an independent public accountant. In such situations, HUD will apply independent audit and performance assessment requirements consistent with that determination. With respect to any consortium, however, HUD may determine (based on a request from the consortium or other circumstances) to apply independent audit and performance requirements on a different basis where this would promote sound management.

Subpart C—Subsidiaries, Affiliates, Joint Ventures in Public Housing

§ 943.140 What programs and activities are covered by this subpart?

(a) This subpart applies to the provision of a PHA's public housing administrative and management functions, and to the provision (or arranging for the provision) of supportive and social services in connection with public housing. This subpart does not apply to activities of a PHA that are subject to the requirements of part 941, subpart F, of this title.

(b) For purposes of this subpart, the term ''joint venture partner'' means a participant (other than a PHA) in a joint venture, partnership, or other business arrangement or contract for services with a PHA.

(c) This part does not affect a PHA's authority to use joint ventures, as may be permitted under State law, when using non-1937 Act funds.

§ 943.142 In what types of operating organizations may a PHA participate?

(a) A PHA may create and operate a wholly owned or controlled subsidiary or other affiliate; may enter into joint ventures, partnerships, or other business arrangements with individuals, organizations, entities, or governmental units. A subsidiary or affiliate may be a nonprofit corporation. A subsidiary or affiliate may be an organization controlled by the same persons who serve on the governing board of the PHA or who are employees of the PHA.

(b) The purpose of any of these operating organizations would be to administer programs of the PHA.

§ 943.144 What financial impact do operations of a subsidiary, affiliate, or joint venture have on a PHA?

Income generated by subsidiaries, affiliates, or joint ventures formed under the authority of this subpart is to be used for low-income housing or to benefit the residents assisted by the PHA. This income will not cause a decrease in funding provided under the public housing program, except as otherwise provided under the Operating Fund and Capital Fund formulas.

§ 943.146 What impact does the use of a subsidiary, affiliate, or joint venture have on financial accountability to HUD and the Federal government?

None; the subsidiary, affiliate, or joint venture is subject to the same authority of HUD, HUD's Inspector General, and the Comptroller General to audit its conduct.

§ 943.148 What procurement standards apply to PHAs selecting partners for a joint venture?

(a) The requirements of part 85 of this title are applicable to this part, subject to paragraph (b) of this section, in connection with the PHA's public housing program.

(b) A PHA may use competitive proposal procedures for qualifications-based procurement (request for qualifications or ''RFQ''), or may solicit a proposal from only one source (''sole source'') to select a joint venture partner to perform an administrative or management function of its public housing program or to provide or arrange to provide supportive or social services covered under this part, under the following circumstances:

(1) The proposed joint venture partner has under its control and will make available to the partnership substantial, unique and tangible resources or other benefits that would not otherwise be available to the PHA on the open market (*e.g.*, planning expertise, program experience, or financial or other resources). In this case, the PHA must maintain documentation to substantiate both the cost reasonableness of its selection of the proposed partner and the unique qualifications of the partner: or

(2) A resident group or a PHA subsidiary is willing and able to act as the PHA's partner in performing administrative and management functions or to provide supportive or social services. This entity must comply with the requirements of part 84 of this title (if the entity is a nonprofit) or part

85 of this title (if the entity is a State or local government) with respect to its selection of the members of the team and the members must be paid on a cost-reimbursement basis only. The PHA must maintain documentation that indicates both the cost reasonableness of its selection of a resident group or PHA subsidiary and the ability of that group or subsidiary to act as the PHA's partner under this provision.

§ 943.150 What procurement standards apply to a PHA's joint venture partner?

(a) *General.* A joint venture partner is not a grantee or subgrantee and, accordingly, is not required to comply with part 84 or part 85 of this title in its procurement of goods and services under this part. The partner must comply with all applicable State and local procurement and conflict of interest requirements with respect to its selection of entities to assist in PHA program administration.

(b) *Exception.* If the joint venture partner is a subsidiary, affiliate, or identity of interest party of the PHA, it is subject to the requirements of part 85 of this title. HUD may, on a case-by-case basis, exempt such a joint venture partner from the need to comply with requirements under part 85 of this title if HUD determines that the joint venture has developed an acceptable alternative procurement plan.

(c) *Contracting with identity-of-interest parties.* A joint venture partner may contract with an identity-of-interest party for goods or services, or a party specified in the selected bidder's response to a RFP or RFQ (as applicable), without the need for further procurement if:

(1) The PHA can demonstrate that its original competitive selection of the partner clearly anticipated the later provision of such goods or services;

(2) Compensation of all identity-of-interest parties is structured to ensure there is no duplication of profit or expenses; and

(3) The PHA can demonstrate that its selection is reasonable based upon prevailing market costs and standards, and that the quality and timeliness of the goods or services is comparable to that available in the open market. For purposes of this paragraph (c), an ''identity-of-interest party'' means a party that is wholly owned or controlled by, or that is otherwise affiliated with, the partner or the PHA. The PHA may use an independent organization experienced in cost valuation to determine the cost reasonableness of the proposed contracts.

§ 943.151 What procurement standards apply to a joint venture itself?

(a) When the joint venture as a whole is controlled by the PHA or an identity of interest party of the PHA, the joint venture is subject to the requirements of part 85 of this title.

(b) If a joint venture is not controlled by the PHA or an identity of interest party of the PHA, then the rules that apply to the other partners apply. See § 943.150.

Dated: November 8, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–30332 Filed 11–28–00; 8:45 am]

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Part III

Office of Management and Budget

Issuance of Transmittal Memorandum Amending OMB Circular No. A–129, "Policies for Federal Credit Programs and Non-Tax Receivables"; Notice

OFFICE OF MANAGEMENT AND BUDGET

Issuance of Transmittal Memorandum Amending OMB Circular No. A–129, ''Policies for Federal Credit Programs and Non-Tax Receivables''

AGENCY: Executive Office of the President, Office of Management and Budget, Budget Analysis and Systems Division.

ACTION: Notice of Transmittal amending OMB Circular No. A–129, ''Policies for Federal Credit Programs and Non-Tax Receivables''.

SUMMARY: This Circular updates policies and procedures for justifying, designing, and managing Federal credit programs and for collecting non-tax receivables.

FOR FURTHER INFORMATION CONTACT: Ms. Courtney Timberlake, Office of Management and Budget, Budget and Analysis Branch, NEOB Room 6001, 725 17th Street, NW, Washington, DC 20503, Tel. No. (202) 395–7864.

Availability: Copies of the OMB Circular A–129, and currently applicable Transmittal Memoranda may be obtained at the OMB Homepage on the Internet. The online address (URL) is *http://www.whitehouse.gov/OMB* circular/index.html#numerical.

Dated: November 16, 2000.

Robert L. Nabors,

Executive Secretary and Assistant Director for Administration.

Policies For Federal Credit Programs and Non-Tax Receivables Circular No. A–129 (Revised)

OMB Circular No. A–129 (Revised) Policies for Federal Credit Programs and Non-Tax Receivables

Table of Contents

Executive Office of the President, Office of Management and Budget

Washington, DC 20503

Circular No. A–129

Revised

To the Heads of Executive Departments and Establishments

SUBJECT: Policies for Federal Credit Programs and Non-Tax Receivables

Federal credit programs are created to accomplish a variety of social and economic goals. Agencies must implement budget policies and management practices that ensure the goals of credit programs are met while properly identifying and controlling costs. In addition, Federal receivables, whether from credit programs or other non-tax sources, must be serviced and collected in an efficient and effective manner to protect the value of the Federal Government's assets.

General Information

1. *Purpose.* This Circular prescribes policies and procedures for justifying, designing, and managing Federal credit programs and for collecting non-tax receivables. It sets principles for designing credit programs, including: the preparation and review of legislation and regulations; budgeting for the costs of credit programs and minimizing unintended costs to the Government; and improving the efficiency and effectiveness of Federal credit programs. It also sets standards for extending credit, managing lenders participating in Government guaranteed loan programs, servicing credit and non-tax receivables, and collecting delinquent debt.

2. *Authority.* This Circular is issued under the authority of the *Budget and Accounting Act of 1921, as amended;* the *Budget and Accounting Act of 1950, as amended;* the *Debt Collection Act of 1982; as amended by the Debt Collection Improvement Act of 1996; Section 2653 of Public Law 98–369;* the *Federal Credit Reform Act of 1990, as amended;* the *Federal Debt Collection Procedures Act of 1990;* the *Chief Financial Officers Act of 1990, as amended; Executive Order 8248;* the *Cash Management Improvement Act Amendments of 1992;* and pre-existing common law authority to charge interest on debts and to offset payments to collect debts administratively.

3. *Coverage.* a. *Applicability.* The provisions of this Circular apply to all credit programs of the Federal Government, including:

(1) Direct loan programs;

(2) Loan guarantee programs and loan insurance programs in which the Federal Government bears a legal liability to pay for all or part of the principal or interest in the event of borrower default; and

(3) Loans or other financial assets acquired by a Federal agency (or a receiver or conservator acting for a Federal agency) as a result of a claim payment on a defaulted guaranteed or insured loan or in fulfillment of a Federal deposit insurance commitment.

Sections IV and V of Appendix A (''Managing the Federal Government's Receivables'' and ''Delinquent Debt Collection'') also apply to receivables due to the Government from the sale of goods and services; fines, fees, duties, leases, rents, royalties, and penalties; overpayments to beneficiaries, grantees, contractors, and Federal employees; and similar debts.

b. *Exclusions Under the Debt Collection Acts.* Certain debt collection techniques authorized or mandated by the provisions of the Debt Collection Act of 1982 (DCA), as amended by the Debt Collection Improvement Act of 1996 (DCIA), do not apply to debts arising under the Internal Revenue Code, certain sections of the Social Security Act, or the tariff laws of the United States.

c. *Other Statutory Exclusions.* The policies and standards of this Circular do not apply when they are statutorily prohibited or are inconsistent with statutory requirements. However, agencies are required to periodically review legislation affecting the form of assistance and/or financial standards for credit programs to justify continuance of any non-conformance.

4. *Rescissions.* This Circular rescinds and replaces OMB Circular No. A–129 (revised), dated January 1993, and OMB Bulletin No. 91–05, dated November 26, 1990.

This Circular supplements, and does not supersede, the requirements applicable to budget submissions under OMB Circular No. A–11 and to proposed legislation and testimony under OMB Circular No. A–19.

5. *Effective Date.* This Circular is effective immediately.

6. *Inquiries.* Further information on the implementation of credit management and debt collection policies may be found in the Department of the Treasury's Financial Management Service Managing Federal Receivables and in OMB's Governmentwide 5-Year Plan for financial management submitted annually to Congress.

For inquiries concerning budget and legislative policy for credit programs contact

the Office of Management and Budget, Budget Review Division, Budget Analysis Branch, Room 6002, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503; (202) 395–3945. Questions on all other sections of the Circular should be directed to the Office of Federal Financial Management (202) 395–4534.

7. *Definitions.* Unless otherwise defined in this circular, *key* terms used in this circular are defined in OMB Circular Nos. A–11 and A–34.

Jacob J. Lew,

Director.

Appendices (3)

Appendix A to Circular No. A–129

I. Responsibilities of Departments and Agencies

REFERENCES

Statutory	Federal Credit Reform Act of 1990, 2 U.S.C. 661; Debt Collection Act of 1982/Debt Collection Improvement Act of 1996, 31 U.S.C. 3701, 3711–3720E; Federal Debt Collection Procedures Act of 1990; Budget and Accounting Act of 1921; Budget and Accounting Act of 1950; Chief Financial Officers Act of 1990; Cash Management Improvement Act Amendments of 1992;

1. *Office of Management and Budget.* The Office of Management and Budget (OMB) is responsible for reviewing legislation to establish new credit programs or to expand or modify existing credit programs; monitoring agency conformance with the Federal Credit Reform Act; formulating and reviewing agency credit reporting standards and requirements; reviewing and clearing testimony pertaining to credit programs and debt collection; reviewing agency budget submissions for credit programs and debt collection activities; developing and maintaining the Federal credit subsidy calculator used to calculate the cost of credit programs; formulating and reviewing credit management and debt collection policy; approving agency credit management and debt collection plans; and providing training to credit agencies.

2. *Department of the Treasury.* The Department of the Treasury (Treasury), acting through the Office of Domestic Finance, works with OMB to develop Federal credit policies and/or reviewing legislation to create new credit programs or to expand or modify existing credit programs. The Department of the Treasury, through its Financial Management Service (FMS), promulgates government-wide debt collection regulations implementing the debt collection provisions of the *Debt Collection Improvement Act of 1996 (DCIA).* FMS works with the Federal program agencies to identify debt that is eligible for referral to Treasury for cross-servicing and offset, and to establish target dates for referral. Performance measures are established which set annual referral and collection goals. In accordance with the DCIA and other Federal laws, FMS conducts offset of Federal payments, including tax refunds, under the Treasury Offset Program. FMS also provides collection services for delinquent non-tax Federal debts (referred to as cross-servicing), and maintains a private collection agency contract for referral and collection of delinquent debts. Additionally, FMS issues operational and procedural guidelines regarding government-wide credit management and debt collection such as *''Managing Federal Receivables''* and the *''Guide to the Federal Credit Bureau Program.''* FMS, under its program responsibility for credit and debt management and as an active member of the Federal Credit Policy Working Group, assists in improving credit and debt management activities government-wide.

3. *Federal Credit Policy Working Group.* The Federal Credit Policy Working Group (FCPWG) is an interagency forum that provides advice and assistance to the Office of Management and Budget (OMB) and Treasury in the formulation and implementation of credit policy. Membership consists of representatives from the Executive Office of the President, the Council of Economic Advisers, the OMB, and the Department of the Treasury. The major credit and debt collection agencies represented include the Departments of Agriculture, Commerce, Education, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, Veterans Affairs and the Agency for International Development, the Export-Import Bank, the Federal Deposit Insurance Corporation and the Small Business Administration. Other departments and agencies may be invited to participate in the FCPWG at the request of the Chairperson. The Director of OMB designates the Chairperson of the FCPWG.

4. *Department and Agencies.* Departments and agencies shall manage credit programs and all non-tax receivables in accordance with their statutory authorities and the provisions of this Circular to protect the Government's assets and to minimize losses in relation to social benefits provided.

a. *Agencies shall ensure that:*

(1) Federal credit program legislation, regulations, and policies are designed and administered in compliance with the principles of this Circular;

(2) The costs of credit programs covered by the Federal Credit Reform Act of 1990 are budgeted for and controlled in accordance with the principles of that Act. (Some agencies and programs are expressly exempted from the statute.);

(3) Every effort is made to prevent future delinquencies by following appropriate screening standards and procedures for determination of creditworthiness;

(4) Lenders participating in guaranteed loan programs meet all applicable financial and programmatic requirements;

(5) Informed and cost effective decisions are made concerning portfolio management, including full consideration of contracting out for servicing or selling the portfolio;

(6) The full range of available techniques are used, such as those found in the Federal Claims Collection Standards and Treasury regulations, as appropriate, to collect delinquent debts, including demand letters, administrative offset, salary offset, tax refund offset, private collection agencies, cross-servicing by Treasury, administrative wage garnishment, and litigation;

(7) Delinquent debts are written-off as soon as they are determined to be uncollectible; and

(8) Timely and accurate financial management and performance data are submitted to OMB and the Department of the Treasury so that the Government's credit management and debt collection programs and policies can be evaluated.

b. *In order to achieve these objectives, agencies shall:*

(1) Establish, as appropriate, boards to coordinate credit management and debt collection activities and to ensure full consideration of credit management and debt collection issues by all interested and affected organizations. Representation should include, but not be limited to, the agency Chief Financial Officer (CFO) and the senior official(s) for program offices with credit activities or non-tax receivables. The Board may seek from the agency's Inspector General, input based on findings and conclusions from past audits and investigations.

(2) Ensure that the statutory and regulatory requirements and standards set forth in this Circular, Treasury regulations, and supplementary guidance set forth in the Treasury/FMS Managing Federal Receivables are incorporated into agency regulations and procedures for credit programs and debt collection activities;

(3) Propose new or revised legislation, regulations, and forms as necessary to ensure consistency with the provisions of this Circular;

(4) Submit legislation and testimony affecting credit programs for review under the OMB Circular No. A–19 legislative clearance process, and budget proposals for review under the Circular No. A–11 budget justification process;

(5) Periodically evaluate Federal credit programs to assure their effectiveness in achieving program goals;

(6) Assign to the agency CFO, in accordance with the Chief Financial Officers Act of 1990, responsibility for directing, managing, and providing policy guidance and oversight of agency financial management personnel, activities, and operations, including the implementation of asset management systems for credit management and debt collection;

(7) Prepare, as part of the agency CFO Financial Management 5-Year Plan, a Credit

Management and Debt Collection Plan for effectively managing credit extension, account servicing, portfolio management and delinquent debt collection. The plan must ensure agency compliance with the standards in this Circular; and

(8) Ensure that data in loan applications and documents for individuals are managed in accordance with the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, and the Right to Financial Privacy Act of 1978, as amended. The Privacy Act of 1974 does not apply to loans and debts of commercial organizations.

II. Budget and Legislative Policy For Credit Programs

Federal credit assistance should be provided only when it is necessary and the best method to achieve clearly specified Federal objectives. Use of private credit markets should be encouraged, and any impairment of such markets or misallocation of the nation's resources through the operation of Federal credit programs should be minimized.

1. Program Review

REFERENCES

Statutory	Federal Credit Reform Act of 1990, 2 U.S.C. 661.
Guidance	OMB Circular No. A–11.

Proposals submitted to OMB for new programs and for reauthorizing, expanding, or significantly increasing funding for existing credit programs should be accompanied by a written review which examines, at a minimum, the following factors:

a. The Federal objectives to be achieved, including:

(1) Whether the credit program is intended to:

(a) Correct a capital market imperfection, which should be defined; and/or

(b) Subsidize borrowers or other beneficiaries, who should be identified, or encourage certain activities, which should be specified.

(2) Why they cannot be achieved without Federal credit assistance, including:

(a) A description of existing and potential private sources of credit by type of institution and the availability and cost of credit to borrowers; and

(b) An explanation as to whether and why these private sources of financing and their terms and conditions must be supplemented and subsidized.

b. The justification for use of a credit subsidy. The review should provide an explanation of why a credit subsidy is the most efficient way of providing assistance, including how it provides assistance in overcoming capital market imperfections, how it would assist the identified borrowers or beneficiaries or would encourage the identified activities, and why it would be preferable to other forms of assistance such as grants or technical assistance.

c. The estimated benefits of the program or program change. The review should estimate or, when the program exists, measure the benefits expected from the program or program change, including the amount by which the distribution of credit is expected to be altered and the favored activity is expected to increase. Information on conducting a cost-benefit analysis can be found in OMB Circular No. A–94.

d. The effects on private capital markets. The review should estimate the extent to which the program substitutes directly or indirectly for private lending, and analyze any elements of program design that encourage and supplement private lending activity, with the objective that private lending is displaced to the smallest degree possible by agency programs.

e. The estimated subsidy level. The review should provide an explicit estimate of the subsidy, as required by the Federal Credit Reform Act of 1990, and an estimate of the expected annual administrative costs (including extension, servicing, and collection) of the credit program. If loan assets are to be sold or are to be included in a prepayment program for programmatic or other reasons, then the subsidy estimate should include the effects of the loan asset sales. For guidance on loan asset sales, see the Debt Collection Improvement Act of 1996, OMB Circular No. A–11, and the Treasury/FMS' Managing Federal Receivables. Loan asset sales/prepayment programs must be conducted in accordance with policies in this Circular and procedures in ''Managing Federal Receivables,'' including the prohibitions against the financing of prepayments by tax-exempt borrowing and sales with recourse except where specifically authorized by statute. The cost of any guarantee placed on the asset sold requires budget authority.

f. The administrative resource requirements. The review should include an examination of the agency's current capacity to administer the new or expanded program and an estimation of any additional resources that would be needed.

2. Form of Assistance

REFERENCES

Statutory	Federal Credit Reform Act of 1990, 2 U.S.C. 661; Internal Revenue Code (Section 149(b)).

When Federal credit assistance is necessary to meet a Federal objective, loan guarantees should be favored over direct loans, unless attaining the Federal objective requires a subsidy, as defined by the Federal Credit Reform Act of 1990, deeper than can be provided by a loan guarantee.

a. Loan guarantees may provide several advantages over direct loans. These advantages include: private sector credit servicing (which tends to be more efficient), private sector analysis of the borrowers creditworthiness, (which tends to allocate resources more efficiently), involvement of borrowers with private sector lenders (which promotes their movement to private credit), and lower portfolio management costs for agencies.

b. Loan guarantees, by removing part or all of the credit risk of a transaction, change the allocation of economic resources. Loan guarantees may make credit available when private financial sources would not otherwise do so, or they may allocate credit to borrowers under more favorable terms than would otherwise be granted. This reallocation of credit may impose a cost on the Government and/or the economy.

c. Direct loans usually offer borrowers lower interest rates and longer maturities than loans available from private financial sources, even those with a Federal guarantee. The use of direct loans, however, may displace private financial sources and increase the possibility that the terms and conditions on which Federal credit assistance is offered will not reflect changes in financial market conditions. The costs to the Government and the economy are therefore likely to be greater.

d. Direct or indirect guarantees of tax-exempt obligations are prohibited under Section 149(b) of the Internal Revenue Code. Guarantees of tax-exempt obligations are an inefficient way of allocating Federal credit. Assistance to the borrower, through the tax exemption and the guarantee, provides interest savings to the borrower that are smaller than the tax revenue loss to the Government. It is generally thought that the cost to the taxpayer is greater than the benefit to the borrower. The Internal Revenue Code provides some exceptions to this requirement; see Section 149(b) of the Internal Revenue Code for further details.

e. To preclude the possibility that Federal agencies will guarantee tax-exempt obligations, either directly or indirectly, agencies will:

(1) Not guarantee federally tax-exempt obligations;

(2) Provide that effective subordination of a direct or guaranteed loan to tax-exempt

obligations will render the guarantee void. To avoid effective subordination, the direct or guaranteed loan and the tax-exempt obligation should be repaid using separate dedicated revenue streams or otherwise separate sources of funding, and should be separately collateralized. In addition, the direct or guaranteed loan terms, such as grace periods, repayment schedules, and availability of deferrals, should be consistent with private sector standards to ensure that they do not create effective subordination;

(3) Prohibit use of a Federal guarantee as collateral to secure a tax-exempt obligation;

(4) Prohibit Federal guarantees of loans funded by tax-exempt obligations; and

(5) Prohibit the linkage of Federal guarantees with tax-exempt obligations. For example, such prohibited linkage occurs if the project is unlikely to be financed without the Federal guarantee covering a portion of the cost. In such cases, the Federal guarantee is, in effect, enabling the tax-exempt obligation to be issued, since without the guarantee the project would not be viable to receive any financing. Therefore, the tax-exempt obligation is dependent on and linked to the Federal guarantee.

f. Where a large degree of subsidy is justified, comparable to that which would be provided by guaranteed tax-exempt obligations, agencies should consider the use of direct loans.

3. Financial Standards

REFERENCES

Statutory	Federal Credit Reform Act of 1990, 2 U.S.C. 661, Chief Financial Officers Act of 1990.
Guidance	OMB Circular No. A–11; SFFAS 2, OMB Circular No. A–34.

In accordance with the Federal Credit Reform Act of 1990, agencies must analyze and control the risk and cost of their programs. Agencies must develop statistical models predictive of defaults and other deviations from loan contracts. Agencies are required to estimate subsidy costs and to obtain budget authority to cover such costs before obligating direct loans and committing loan guarantees. Specific instructions for budget justification and subsidy cost estimation under the Federal Credit Reform Act of 1990 are provided in OMB Circular No. A–11, and instructions for budget execution are provided in OMB Circular No. A–34.

Agencies shall follow sound financial practices in the design and administration of their credit programs. Where program objectives cannot be achieved while following sound financial practices, the cost of these deviations shall be justified in agency budget submissions in comparison with expected benefits. Unless a waiver is approved, agencies should follow the financial practices discussed below.

a. Lenders and borrowers who participate in Federal credit programs should have a substantial stake in full repayment in accordance with the loan contract.

(1) Private lenders who extend credit that is guaranteed by the Government should bear at least 20 percent of the loss from a default. Loan guarantees that cover 100 percent of any losses on a loan encourage private lenders to exercise less caution than they otherwise would in evaluating loan requests. The level of guarantee should be no more than necessary to achieve program purposes. Loans for borrowers who are deemed to pose less of a risk should receive a lower guarantee.

(2) Borrowers should have an equity interest in any asset being financed with the credit assistance, and business borrowers should have substantial capital or equity at risk in their business (see Section III.A.3.b for additional discussion).

(3) Programs in which the Government bears more than 80 percent of any loss should be periodically reviewed to determine whether the private sector has become able to bear a greater share of the risk.

b. Agencies should establish interest and fee structures for direct loans and loan guarantees and should review these structures at least annually. Documentation of the performance of these annual reviews for credit programs is considered sufficient to meet the review requirement described in Section 902(a)8 of the Chief Financial Officers Act of 1990.

(1) Interest and fees should be set at levels that minimize default and other subsidy costs, of the direct loan or loan guarantee, while supporting achievement of the program's policy objectives.

(2) Agencies must request an appropriation in accordance with the Federal Credit Reform Act of 1990 for default and other subsidy costs not covered by interest and fees.

(3) Unless inconsistent with program purposes, and where authorized by law, riskier borrowers should be charged more than those who pose less risk. In order to avoid an unintended additional subsidy to riskier borrowers within the eligible class and to support the extension of credit to those riskier borrowers, programs that, for public policy purposes, do not adhere to this guideline, should justify the extra subsidy conveyed to the higher-risk borrowers in their annual budget submissions to OMB.

c. Contractual agreements should include all covenants and restrictions (*e.g.,* liability insurance) necessary to protect the Federal Government's interest.

(1) Maturities on loans should be shorter than the estimated useful economic life of any assets financed.

(2) The Government's claims should not be subordinated to the claims of other creditors, as in the case of a borrower's default on either a direct loan or a guaranteed loan. Subordination increases the risk of loss to the Government, since other creditors would have first claim on the borrower's assets.

d. In order to minimize inadvertent changes in the amount of subsidy, interest rates to be charged on direct loans and any interest supplements for guaranteed loans should be specified by reference to the market rate on a benchmark Treasury security rather than as an absolute level. A specific fixed interest rate should not be cited in legislation or in regulation, because such a rate could soon become outdated, unintentionally changing the extent of the subsidy.

(1) The benchmark financial market instrument should be a marketable Treasury security with a similar maturity to the direct loans being made or the non-Federal loans being guaranteed. When the rate on the Government loan is intended to be different than the benchmark rate, it should be stated as a percentage of that rate. The benchmark Treasury security must be cited specifically in agency budget justifications.

(2) Interest rates applicable to new loans should be reviewed at least quarterly and adjusted to reflect changes in the benchmark interest rate. Loan contracts may provide for either fixed or floating interest rates.

e. Maximum amounts of direct loan obligations and loan guarantee commitments should be specifically authorized in advance in annual appropriations acts, except for mandatory programs exempt from the appropriations requirements under Section 504(c) of the Federal Credit Reform Act of 1990.

f. Financing for Federal credit programs should be provided by Treasury in accordance with the Federal Credit Reform Act of 1990. Guarantees of the timely payment of 100 percent of the loan principal and interest against all risk create a debt obligation that is the credit risk equivalent of a Treasury security. Accordingly, a Federal agency other than the Department of the Treasury may not issue, sell, or guarantee an obligation of a type that is ordinarily financed in investment securities markets, as determined by the Secretary of the Treasury, unless the terms of the obligation provide that it may not be held by a person or entity other than the Federal Financing Bank (FFB) or another Federal agency. In *exceptional* circumstances, the Secretary of the Treasury may waive this requirement with respect to obligations that the Secretary determines: (1) Are not suitable for investment for the FFB because of the risks entailed in such obligations; or (2) are, or will be, financed in a manner that is least disruptive of private finance markets and institutions; or (3) are, or will be, based on the Secretary's consultation with OMB and the guaranteeing agency, financed in a manner that will best meet the goals of the program. The benefits of using the FFB must not expand the degree of subsidy.

g. Federal loan contracts should be standardized where practicable. Private sector documents should be used whenever possible, especially for loan guarantees.

4. Implementation

REFERENCES

Statutory	Federal Credit Reform Act of 1990, 2 U.S.C. 661; Government Performance and Results Act of 1993.
Guidance	OMB Circular No. A–11; OMB Circular No. A–19.

The provisions of this Section II will be implemented through the OMB Circular No. A–19 legislative review process and the OMB Circular No. A–11 budget justification and submission process. For accounting standards for Federal credit programs, see Accounting for Direct Loans and Loan Guarantees, Statement of Federal Financial Accounting Standards Number 2, developed by the Federal Accounting Standards Advisory Board.

a. Proposed legislation on credit programs, reviews of credit proposals made by others, and testimony on credit activities submitted by agencies under the OMB Circular No. A–19 legislative review process should conform to the provisions of this Circular.

Whenever agencies propose provisions or language not in conformity with the policies of this Circular, they will be required to request in writing that OMB waive the requirement. The request will be submitted on a standard waiver request form, available from OMB. Such requests will identify the waiver(s) requested, and will state the reasons for the request and the time period for which the exception is required. Exceptions, when allowed, will ordinarily be granted only for a limited time in order to allow for an evaluation by OMB. The waiver request form should be submitted to the OMB examiner with primary responsibility for the account.

b. A checklist for reviews of legislative and budgetary proposals is included as Appendix B to this Circular. Agencies should use the model bill language provided in Appendix C in developing and reviewing legislation unless OMB has approved the use of alternative language that includes the same substantive elements.

c. Every four years, or more often at the request of the OMB examiner with primary responsibility for the account, the agency's annual budget submission (required by OMB Circular No. A–11, Section 15.2) should include:

(1) A plan for periodic, results-oriented evaluations of the effectiveness of the program, and the use of relevant program evaluations and/or other analyses of program effectiveness or causes of escalating program costs. A program evaluation is a formal assessment, through objective measurement and systematic analysis, addressing the manner and extent to which credit programs achieve intended objectives. This information should be contained in agencies' annual performance plans submitted to OMB. (For further detail on program evaluation, refer to the Government Performance and Results Act of 1993 (GPRA) and related guidance);

(2) A review of the changes in financial markets and the status of borrowers and beneficiaries to verify that continuation of the credit program is required to meet Federal objectives, to update its justification, and to recommend changes in its design and operation to improve efficiency and effectiveness; and

(3) Proposed changes to correct those cases where existing legislation, regulations, or program policies are not in conformity with the policies of this Section II. When an agency does not deem a change in existing legislation, regulations, or program policies to be desirable, it will provide a justification for retaining the non-conformance.

III. Credit Management and Extension Policy

A. Credit Extension Policies

REFERENCES

Statutory	31 U.S.C. 3720B, 18 U.S.C. 1001, 31 U.S.C. 7701(d).
Regulatory	31 CFR 285.13, Executive Order 13109, 61 Federal Register 51763.
Guidance	Treasury/FMS ''Managing Federal Receivables,'' ''Treasury Report on Receivables (TROR),'' and ''Guide to the Federal Credit Bureau Program''.

1. *Applicant Screening.* a. *Program Eligibility.* Federal credit granting agencies and private lenders in guaranteed loan programs, shall determine whether applicants comply with statutory, regulatory, and administrative eligibility requirements for loan assistance. If it is consistent with program objectives, borrowers should be required to certify and document that they have been unable to obtain credit from private sources. In addition, application forms must require the borrower to certify the accuracy of information being provided. (False information is subject to penalties under 18 U.S.C. 1001.)

b. *Delinquency on Federal Debt.* Agencies should determine if the applicant is delinquent on any Federal debt, including tax debt. Agencies should include a question on loan application forms asking applicants if they have such delinquencies. In addition, agencies and guaranteed loan lenders, shall use credit bureaus as a screening tool. Agencies are also encouraged to use other appropriate databases, such as the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System CAIVRS to identify delinquencies on Federal debt.

Processing of applications shall be suspended when applicants are delinquent on Federal tax or non-tax debts, including judgment liens against property for a debt to the Federal Government, and are therefore not eligible to receive Federal loans, loan guarantees or insurance. (See 31 U.S.C. 3720B regarding non-tax debts.) This provision does not apply to disaster loans. Agencies should review and comply with 31 U.S.C. 3720B and 31 CFR 285.13 before extending credit. Processing should continue only when the debtor satisfactorily resolves the debts (*e.g.,* pays in full or negotiates a new repayment plan).

c. *Creditworthiness.* Where creditworthiness is a criterion for loan approval, agencies and private lenders shall determine if applicants have the ability to repay the loan and a satisfactory history of repaying debt. Credit reports and supplementary data sources, such as financial statements and tax returns, should be used to verify or determine employment, income, assets held, and credit history.

d. *Delinquent Child Support.* Agencies shall deny Federal financial assistance to individuals who are subject to administrative offset to collect delinquent child support payments. See Executive Order 13109, 61 **Federal Register** 51763 (1996). The Attorney General has issued Minimum Due Process Guidelines: Denial of Federal Financial Assistance Pursuant to Executive Order 13109, which agencies shall include in their procedures or regulations promulgated for the purpose of denying Federal financial assistance in accordance with Executive Order 13109.

e. *Taxpayer Identification Number.* Pursuant to 31 U.S.C. 7701(d), agencies must obtain the taxpayer identification number (TIN) of all persons doing business with the agency. All agencies and lenders extending credit shall require the applicant or borrower to supply a TIN as a prerequisite to obtaining credit or assistance.

2. *Loan Documentation.* Loan origination files should contain loan applications, credit bureau reports, credit analyses, loan contracts, and other documents necessary to conform to private sector standards for that type of loan. Accurate and complete documentation is critical to providing proper servicing of the debt, pursuing collection of delinquent debt, and in the case of guaranteed loans, processing claim payments. Additional information on documentation requirements is available in

the supplement to the *Treasury Financial Manual* Managing Federal Receivables.

3. *Collateral Requirements.* For many types of loans, the Government can reduce its risk of default and potential losses through well managed collateral requirements.

a. *Appraisals of Real Property.* Appraisals of real property serving as collateral for a direct or guaranteed loan must be conducted in accordance with the following guidelines:

(1) Agencies should require that all appraisals be consistent with the Uniform Standards of Professional Appraisal Practice, promulgated by the Appraisal Standards Board of the Appraisal Foundation. Agencies shall prescribe additional appraisal standards as appropriate.

(2) Agencies should ensure that a State licensed or certified appraiser prepares an appraisal for all credit transactions over $100,000 ($250,000 for business loans).

(This does not include loans with no cash out and those transactions where the collateral is not a major factor in the decision to extend credit).

Agencies shall determine which of these transactions, because of the size and/or complexity, must be performed by a State licensed or certified appraiser. Agencies may also designate direct or guaranteed loan transactions under $100,000 ($250,000 for business loans) that require the services of a State licensed or certified appraiser.

b. *Loan to Value Ratios.* In some credit programs, the primary purpose of the loan is to finance the acquisition of an asset, such as a single family home, which then serves as collateral for the loan. Agencies should ensure that borrowers assume an equity interest in such assets in order to reduce defaults and Government losses. Federal agencies should explicitly define the components of the loan to value ratio (LTV) for both direct and guaranteed loan programs. Financing should be limited by not offering terms (including the financing of closing costs) that result in an LTV equal to or greater than 100 percent. Further, the loan maturity should be shorter than the estimated useful economic life of the collateral.

c. *Liquidation of Real Property Collateral for Guaranteed Loans.* In general, it is not in the Federal Government's financial interest to assume the responsibility for managing and disposing of real property serving as collateral on defaulted guaranteed loans. Private lenders should be required to liquidate, through litigation if necessary, any real property collateral for a defaulted guaranteed loan before filing a default claim with the credit granting agency.

d. *Asset Management Standards and Systems.* Agencies should establish policies and procedures for the acquisition, management, and disposal of real property acquired as a result of direct or guaranteed loan defaults. Agencies should establish inventory management systems to track all costs, including contractual costs, of maintaining and selling property. Inventory management systems should also generate management reports, provide controls and monitoring capabilities, and summarize information for the Office of Management and Budget and the Department of the Treasury. (See Treasury Report on Receivables).

B. Management of Guaranteed Loan Lenders and Servicers

REFERENCES

Guidance	Treasury/FMS ''Managing Federal Receivables''.

1. *Lender Eligibility.* a. *Participation Criteria.* Federal credit granting agencies shall establish and publish in the **Federal Register** specific eligibility criteria for lender participation in Federally guaranteed loan programs. These criteria should include:

(1) Requirements that the lender is not currently debarred/suspended from participation in a Government contract or delinquent on a Government debt;

(2) Qualification requirements for principal officers and staff of the lender;

(3) Fidelity/surety bonding and/or errors and omissions insurance with the Federal Government as a loss payee, where appropriate, for new or non-regulated lenders or lenders with questionable performance under Federal guarantee programs;

(4) Financial and capital requirements for lenders not regulated by a Federal financial institution regulatory agency, including minimum net worth requirements based on business volume.

b. *Review of Eligibility.* Agencies shall review and document a lender's eligibility for continued participation in a guaranteed loan program at least every two years. Ideally, these reviews should be conducted in conjunction with on-site reviews of lender operations (see B.3) or other required reviews, such as renewal of a lender agreement (see B.2). Lenders not meeting standards for continued participation should be decertified. In addition to the participation criteria above, guarantor agencies should consider lender performance as a critical factor in determining continued eligibility for participation.

c. *Fees.* When authorized and appropriated for such purposes, agencies should assess non-refundable fees to defray the costs of determining and reviewing lender eligibility.

d. *Decertification.* Guarantor agencies should establish specific procedures to decertify lenders or take other appropriate action any time there is:

(1) Significant and/or continuing non-conformance with agency standards; and/or

(2) Failure to meet financial and capital requirements or other eligibility criteria.

Agency procedures should define the process and establish timetables by which decertified lenders can apply for reinstatement of eligibility for Federal guaranteed loan programs.

e. *Loan Servicers.* Lenders transferring and/or assigning the right to service guaranteed loans to a loan servicer should use only servicers meeting applicable standards set by the Federal guarantor agency. Where appropriate, agencies may adopt standards for loan servicers established by a Government Sponsored Enterprise (GSE) or a similar organization (*e.g.,* Government National Mortgage Association for single family mortgages) and/or may authorize lenders to use servicers that have been approved by a GSE or similar organization.

2. *Lender Agreements.* Agencies should enter into written agreements with lenders that have been determined to be eligible for participation in a guaranteed loan program. These agreements should incorporate general participation requirements, performance standards and other applicable requirements of this Circular. Agencies are encouraged, where not prohibited by authorizing legislation, to set a fixed duration for the agreement to ensure a formal review of the lender eligibility for continued participation in the program.

a. *General Participation Requirements.*

(1) Requirements for lender eligibility, including participation criteria, eligibility reviews, fees, and decertification (see *Section 1*, above);

(2) Agency and lender responsibilities for sharing the risk of loan defaults (see *Section II.3. a.(1)*); and, where feasible

(3) Maximum delinquency, default and claims rates for lenders, taking into account individual program characteristics.

b. *Performance Standards.* Agencies should include due diligence requirements for originating, servicing, and collecting loans in their lender agreements. This may be accomplished by referencing agency regulations or guidelines. Examples of due diligence standards include collection procedures for past due accounts, delinquent debtor counseling procedures and litigation to enforce loan contracts.

Agencies should ensure, through the claims review process, that lenders have met these standards prior to making a claim payment. Agencies should reduce claim amounts or reject claims for lender non-performance.

c. *Reporting Requirements.* Federal credit granting agencies should require certain data to monitor the health of their guaranteed loan portfolios, track and evaluate lender performance and satisfy OMB, Treasury, and other reporting requirements which include the Treasury Report on Receivables (TROR). Examples of these data which agencies must maintain include:

(1) *Activity Indicators*—number and amount of outstanding guaranteed loans at the beginning and end of the reporting period and the agency share of risk; number and amount of guaranteed loans made during the reporting period; and number and amount of guaranteed loans terminated during the period.

(2) *Status Indicators*—a schedule showing the number and amount of past due loans by

''age'' of the delinquency, and the number and amount of loans in foreclosure or liquidation (when the lender is responsible for such activities).

Agencies may have several sources for such data, but some or all of the information may best be obtained from lenders and servicers. Lender agreements should require lenders to report necessary information on a quarterly basis (or other reporting period based on the level of lending and payment activity).

d. *Loan Servicers.* Lender agreements must specify that loan servicers must meet applicable participation requirements and performance standards. The agreement should also specify that servicers acquiring loans must provide any information necessary for the lender to comply with reporting requirements to the agency. Servicers may not resell the loans except to qualified servicers.

3. *Lender and Servicer Reviews.* To evaluate and enforce lender and servicer performance, agencies should conduct on-site reviews. Agencies should summarize reviews findings in written reports with recommended corrective actions and submit them to agency review boards. (See Section I.4.b.(1).)

Reviews should be conducted biennially where possible; however, agencies should conduct annual on-site reviews all lenders and servicers with substantial loan volume or whose:

a. Financial performance measures indicate a deterioration in their guaranteed loan portfolio;

b. Portfolio has a high level of defaults for guaranteed loans less than one year old;

c. Overall default rates rise above acceptable levels; and/or

d. Poor performance results in collecting monetary penalties or an abnormally high number of reduced or rejected claims.

Agencies are encouraged to develop a lender/servicer classification system which assigns a risk rating based on the above factors. This risk rating can be used to establish priorities for on-site reviews and monitor the effectiveness of required corrective actions.

Reviews should be conducted by guarantor agency program compliance staff, Inspector General staff, and/or independent auditors. Where possible, agencies with similar programs should coordinate their reviews to minimize the burden on lenders/servicers and maximize use of scarce resources. Agencies should also utilize the monitoring efforts of GSEs and similar organizations for guaranteed loans that have been ''pooled''.

4. *Corrective Actions.* If a review indicates that the lender/servicer is not in conformance with all program requirements, agencies should determine the seriousness of the problem. For minor non-compliance, agencies and the lender or servicer should agree on corrective actions. However, agencies should establish penalties for more serious and frequent offenses. Penalties may include loss of guarantees, reprimands, probation, suspension, and decertification.

IV. Managing the Federal Government's Receivables

Agencies must service and collect debts, including defaulted guaranteed loans they have acquired, in a manner that best protects the value of the assets. Mechanisms must be in place to collect and record payments and provide accounting and management information for effective stewardship. Agencies should collect data on the status of their portfolios on a monthly basis although they are only required to report quarterly. These servicing activities can be carried out by the agency, or by third parties (such as private lenders or guaranty agencies), or a contract with a private sector firm. Unless otherwise exempt, the Debt Collection Improvement Act of 1996 (DCIA), codified at 31 U.S.C. 3711, requires Federal agencies to transfer any non-tax debt which is over 180 days delinquent to the Department of the Treasury/FMS for debt collection action (31 CFR Part 285). Under certain conditions, it may be advantageous to sell loans or other debts to avoid the necessity of debt servicing.

1. Accounting and Financial Reporting:

REFERENCES

Statutory	DCA, Chief Financial Officers Act (CFO) of 1990, Government Performance and Results Act, Federal Credit Reform Act of 1990, 31 U.S.C. 3719, 31 U.S.C. 3711, 2 U.S.C. 661.
Regulatory	31 CFR Part 285, OMB Circular No. A–127.
Guidance	JFMIP Standards on Direct and Guaranteed Loans, Instructions for the Treasury Report on Receivables Due from the Public (TROR), Treasury/FMS' ''Managing Federal Receivables,'' Federal Accounting Standards Advisory Board—''Accounting for Direct Loans and Loan Guarantees,'' Statement of Federal Financial Accounting Standards No. 2, as amended,'' ''Amendments to Accounting Standards for Direct Loans and Loan Guarantees,'' Statement of Federal Financial Accounting Standards No. 18.

a. *Accounting and Financial Reporting Systems.* Agencies shall establish accounting and financial reporting systems to meet the standards provided in this Circular, OMB Circular No. A–127, ''Financial Management Systems'', ''JFMIP Standards on Direct and Guaranteed Loans'', and other government-wide requirements. These systems shall be capable of accounting for obligations and outlays and of meeting the reporting requirements of OMB and Treasury, including those associated with the Federal Credit Reform Act of 1990 and the Chief Financial Officers (CFO) Act of 1990.

b. *Agency Reports.* Agencies should use comprehensive reports on the status of loan portfolios and receivables to evaluate management effectiveness. Agencies shall prepare, in accordance with the CFO Act and OMB guidance, annual financial statements that include loan programs and other receivables. Agencies should also collect data for program performance measures (such as default rates, purchase rates, recovery rates, subsidy rates [actual vs. projected], and administrative costs) consistent with the Government Performance and Results Act of 1993 (GPRA) and Federal Credit Reform Act of 1990.

Agencies are also required to report periodically to Treasury on the status and condition of their non-tax delinquent portfolio on the TROR. Due to a timing difference between the submissions of fiscal year-end data for the TROR, and data used for agency financial statements (the fiscal year-end receivables report is due in November and agency financial statements are not due until February/March of the following year), the data in these two reports may not be identical. Agencies should be able to explain differences and show the relationship of information contained in the two reports, but the reports are not required to reconcile.

2. *Loan Servicing Requirements.* Agency servicing requirements, whether performed in-house or by another agency or private sector firm, must meet the standards described below and in the Treasury/FMS publication Managing Federal Receivables.

REFERENCES

Statutory	Privacy Act of 1974, Debt Collection Act of 1982 (DCA), Debt Collection Improvement Act of 1996 (DCIA), 31 U.S.C. 3711.
Guidance	Treasury/FMS' ''Managing Federal Receivables,'' and the ''Guide to the Federal Credit Bureau Program''.

a. *Documentation.* Approved loan files (or other systems of records) shall contain adequate and up-to-date information reflecting terms and conditions of the loan, payment history, including occurrences of delinquencies and defaults, and any

subsequent loan actions which result in payment deferrals, refinancing, or rescheduling.

b. *Billing and Collections.* Agencies shall ensure that there is routine invoicing of payments, and that efficient mechanisms are in place to collect and record payments. When making payments and where appropriate, borrowers should be encouraged to use agency systems established by Treasury which collect payments electronically, such as pre-authorized debits and credit cards.

c. *Escrow Accounts.* Agency servicing systems must process tax and insurance deposits for housing and other long-term real estate loans through escrow accounts. Agencies should establish escrow accounts at the time of loan origination and payments for housing and other long-term real estate loans through an escrow account.

d. *Referring Account Information to Credit Reporting Agencies.* Agency servicing systems must be able to identify and refer debts to credit bureaus in accordance with the requirements of 31 U.S.C. 3711. Agencies shall refer *all* non-tax, non-tariff commercial accounts (current and delinquent) and *all* delinquent non-tariff and non-tax consumer accounts. Agencies may report *current* consumer debts as well and are encouraged to do so. The reporting of current data (in addition to any delinquencies) provides a truer picture of indebtedness while simultaneously reflecting accounts that the borrower has maintained in good standing. There is no minimum dollar threshold, *i.e.*, accounts (debts) owed for as low as $5 may be referred to credit reporting agencies. Agencies shall require lenders participating in Federal loan programs to provide information relating to the extension of credit to consumer or commercial credit reporting agencies, as appropriate. For additional information, agencies should refer to Treasury/FMS' Guide to the Federal Credit Bureau Program.

3. Asset Resolution

REFERENCES

Statutory	DCIA, 31 U.S.C. 3711(i); Federal Credit Reform Act of 1990, 2 U.S.C. 661.
Guidance	OMB Circular No. A–11, Section 85.7, OMB Circular No. A–34.

a. The DCIA, as codified at 31 U.S.C. 3711(i) authorizes agencies to sell any non-tax debt owed to the United States that is more than 90 days delinquent, subject to the provisions of the Federal Credit Reform Act of 1990. The Administration's budget policy is that agencies are required to sell any non-tax debts that are delinquent for more than one year for which collection action has been terminated, if the Secretary of the Treasury determines that the sale is in the best interest of the United States Government. Agencies are required to sell the debts for cash or a combination of cash and profit participation, if such an arrangement is more advantageous to the government, and make the sales without recourse. Loan sales should result in shifting agency staff resources from servicing to mission critical functions.

Beginning in FY 2000, for programs with $100 million in assets (unpaid principal balance) that are delinquent for more than two years, the agency is expected to dispose of assets expeditiously. (See OMB Circular No. A–11.) Agencies may request from OMB, an exception for the following:

(1) Loans to foreign countries and entities;

(2) Loans in structured forbearance, when conversion to repayment status is expected within 24 months or after statutory requirements are met;

(3) Loans that are written off as unenforceable *e.g.*, due to death, disability, or bankruptcy;

(4) Loans that have been submitted to Treasury for offset and are expected to be extinguished within three (3) years;

(5) Loans in adjudication or foreclosure; and

(6) Student loans.

Agencies shall provide to OMB an annual list of loans that are exempted.

b. *Evaluate Asset Portfolio.* On an annual basis, agencies shall take steps to evaluate and analyze existing asset portfolios and programs associated therewith, to determine if there are avenues to:

(1) *Improve Credit Management and Recoveries.* Improvement in current management, performance, and recoveries of asset portfolios shall be reviewed against current marketplace practices;

(2) *Realize Administrative Savings.* Analyses of current asset portfolio practices shall include the benefit of transferring all or some portion of the portfolio to the private sector. Agencies shall develop a staffing utilization plan to ensure that when asset sales result in a decreased workload, staff are shifted to priority workload mission critical functions.

(3) *Initiate Prepayment.* Agencies shall initiate prepayment programs when statutorily mandated or, if upon analysis of an existing asset portfolio practice, it is deemed appropriate. Prepayment programs may be initiated without the approval of OMB. Delinquent borrowers may participate in a prepayment program only if past due principal, interest, and charges are paid in full prior to their request to prepay the balance owed.

c. *Financial Asset Services.* Agencies shall engage the services of outside contractors as deemed necessary to assist in its asset resolution program. Contractors providing various types of asset services are available through the General Services Administration's Multiple Award Schedule for Financial Asset Services as follows:

(1) Program Financial Advisors;
(2) Transaction Specialists
(3) Due Diligence Contractors;
(4) Loan Service/Asset Managers; and
(5) Equity Monitors/Transaction Assistants.

d. *Loan Asset Sales Guidelines.* OMB and Treasury jointly will update existing guidelines and procedures to implement loan prepayment and loan asset sales. In accordance with the agreed upon procedures, agencies conducting such prepayment and loan asset sales programs will consult with both OMB and Treasury throughout the prepayment and loan asset sales processes to ensure consistency with the agreed upon policies and guidelines. Unless an agency can document from their past experience that the sale of certain types of loan assets is not economically viable, a financial advisor shall be engaged by each agency to conduct a portfolio valuation and to compare pricing options for a proposed prepayment plan or loan asset sale. Based on the financial advisor's report, the agencies will develop a prepayment or loan asset sales schedule and plan, including an analysis of the pricing option selected. As part of the ongoing consultation between OMB, Treasury, and the agencies, prior to proceeding with their prepayment or loan asset sales, the agencies will submit their final prepayment or loan asset sales plans and proposed pricing options to OMB and Treasury for review in order to ensure that any undue cost to the Government or additional subsidy to the borrower is avoided. The agency Chief Financial Officer will certify that an agency loan prepayment and loan asset sales program is in compliance with the agreed upon guidelines. See Asset Sales Guidelines.

V. Delinquent Debt Collection

Agencies shall have a fair but aggressive program to recover delinquent debt, including defaulted guaranteed loans acquired by the Federal Government. Each agency will establish a collection strategy consistent with its statutory authority that seeks to return the debtor to a current payment status or, failing that, maximize collection on the debt.

1. Standards for Defining Delinquent and Defaulted Debt

REFERENCES

Statutory	DCA/DCIA/31 U.S.C. 3701, 3711–3720D.
Regulatory	Federal Claims Collection Standards, 31 CFR 900.2(b).
Guidance	Treasury/FMS' ''Managing Federal Receivables''.

The Federal Claims Collections Standards define delinquent debt in general terms. Agency regulations may further define delinquency to meet specific types of debt or program requirements.

a. *Direct Loans.* Agencies shall consider a direct loan account to be delinquent if a payment has not been made by the date specified in the agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made.

b. *Guaranteed Loans.* Loans guaranteed or insured by the Federal Government are in default when the borrower breaches the loan agreement with the private sector lender. A default to the Federal Government occurs when the Federal credit granting agency repurchases the loan, pays a loss claim or pays reinsurance on the loan. Prior to establishing a receivable on the agency financial records, each agency must consider statutory and regulatory authority applicable to the debt in order to determine if the agency has a legal right to subject the debt to the collection provisions of this Circular.

c. *Other Debt.* Overpayments to contractors, grantees, employees, and beneficiaries; fines; fees; penalties; and other debts are delinquent when the debtor does not pay or resolve the debt by the date specified in the agency's initial written demand for payment (which generally should be within 30 days from the date the agency mailed notification of the debt to the debtor).

2. Administrative Collection of Debts

REFERENCES

Statutory	15 U.S.C. 1673(a)(2), 31 U.S.C. 3701, 3711–3720E, 26 U.S.C. 6402, 5 U.S.C. 5514, Fair Debt Collection Practices Act.
Regulatory	31 CFR Part 285, Federal Claims Collection Standards, 31 CFR Part 901, Federal Claims Collections Standards, 5 CFR part 550, subpart K, 26 CFR 301.6402–1 through 301.6402–7, Federal Acquisitions Regulations, Subpart 32.6.
Guidance	Treasury/FMS ''Managing Federal Receivables'' and FMS Cross-servicing/Offset Guidance Documents, Treasury's/FMS' ''Guide to the Federal Credit Bureau Program''.

Agencies shall promptly act on the collection of delinquent debts, using all available collection tools to maximize collections. Agencies shall transfer debts delinquent 180 days or more to the Treasury/FMS or Treasury-designated debt collection centers for further collection actions and resolution. Exceptions to this requirement (*e.g.*, the debt has been referred for litigation) can be found in 31 U.S.C. 3711 and 31 CFR 285.12(d).

a. *Collection Strategy.* Agencies shall maintain an accurate and timely reporting system to identify and monitor delinquent receivables. Each agency shall develop a systematic process for the collection of delinquent accounts. Collection strategies shall take full advantage of available collection tools while recognizing program needs and statutory authority.

b. *Collection Tools for Debts Less than 180 Days Delinquent.* Agencies may use the following collection tools when the debt is fewer than 180 days delinquent:

(i) *Demand Letters.* As soon as an account becomes delinquent, agencies should send demand letters to the debtor. The demand letter must give the debtor notice of each form of collection action and type of financial penalty the agency plans to use. Additional demand letters may be sent if necessary. See 31 U.S.C. 3711, 31 CFR Part 285 and 901.2.

For consumer accounts, the first demand letter or initial billing notice should include the 60 day notification requirement of the agency's intent to refer to a credit bureau. Once the 60 day period has passed, the agency should initiate reporting if the account has not been resolved. This will also enable uninterrupted reporting to credit bureaus by cross-servicing agencies. The 60 day notification of intent to refer to a credit bureau is not required for commercial accounts. (See Treasury/FMS' Guide to the Federal Credit Bureau Program.)

(ii) *Internal Offset.* If the agency that is owed the debt also makes payments to the debtor, the agency may use internal offset to the extent permitted by that agency's statutes and regulations and the common law. Delinquent debts owed by an agency's employees may be offset in accordance with statutes and regulations administered by the Office of Personnel Management. See OPM regulations and statutes.

(iii) *Treasury Offset Program.* Agencies may collect delinquent debt, which is less than 180 days delinquent, by referring those debts to Treasury/FMS in order to offset Federal payments due to the debtor. Payments, which Treasury will offset, include certain benefit payments, federal retirement payments, salaries, vendor payments and tax refunds. 31 U.S.C. 3716, 31 U.S.C. 3720A, 31 CFR Part 285, 26 CFR 301.6402, 31 CFR Chapter II, 901.3, and, Federal Acquisition Regulations Subpart 32.6. If a Federal payment has not yet been initiated in the Treasury Offset Program, agencies may request that the paying agency perform the offset.

(iv) *Administrative Wage Garnishment.* Agencies have the authority to administratively garnish the wages of delinquent debtors in order to recover delinquent debt. The maximum garnishment for any one debt is 15% of disposable pay. Multiple garnishments from all sources against one debtor's wages may not exceed 25% of disposable pay of an individual. 31 U.S.C. 3720D, 31 CFR 285.11 and 15 U.S.C. 1673(a)(2).

(v) *Contracting with Private Collection Agencies.* Treasury has contracted with private collection agencies that may be used by Federal agencies to provide assistance in the recovery of delinquent debt owed to the Government. 31 U.S.C. 3711, 31 U.S.C. 3718, 31 CFR Parts 285, and 901, Fair Debt Collection Practices Act. Agencies may also transfer debts to Treasury prior to 180 days for the purpose of referral to private collection agencies.

(vi) *Treasury Cross-Servicing.* Agencies may transfer debts to Treasury for full servicing at any time after the due process requirements. (See 31 CFR Part 285.)

c. *Collection of Debts Which are Over 180 Days Delinquent.* This paragraph sets forth Treasury's collection procedures for debts which are over 180 days delinquent.

(i) *Treasury Offset Program.* The DCIA requires that all agencies recover debt delinquent more than 180 days by referring those debts to the Treasury for offset of tax refunds and other Federal payments. Agencies must refer all accounts for offset in accordance with guidance provided by the Department of the Treasury/FMS. Federal Claims Collection Standards, 31 U.S.C. 3716, 31 U.S.C. 3720A and 31 CFR Part 285. The following types of offset are undertaken in the Treasury Offset Program (TOP):

(1) Tax Refund Offset;
(2) Vendor Offset;
(3) Federal Retirement Offset;
(4) Salary Offset;
(5) Benefit Offset (At the time of publication, benefit payments have not been incorporated into the program. Benefit payments, such as Social Security Administration (SSA), Black Lung and Railroad Retirement Benefits (RRB) will be added in the future.); and
(6) Other Federal payments as allowed by law (as such payments are allowed into the program).

(ii) *Cross-Servicing.* The DCIA requires that all debts owed to agencies which are more than 180 days delinquent shall be transferred to Treasury/FMS or a Treasury-designated debt collection center for servicing. The DCIA contains provisions and requirements for exempting certain classes of debts from being transferred for servicing www.treas.fms.gov/debt. (See 31 U.S.C. 3711, and 31 CFR Part 285.) Once debts are transferred to Treasury, agencies must cease all collection activities other than maintaining accounts for the Treasury Offset Program.

Once Treasury has received a debt for servicing, the appropriate debt collection actions will be taken. These actions may include sending demand letters; phone calls to delinquent debtors; credit bureau reporting; referring debtors to the Treasury Offset Program; referring debtors to private collection agencies; administrative wage garnishment; and any other available debt collection tool.

3. Referrals to the Department of Justice

A. Referral for Litigation

REFERENCES

Statutory	31 U.S.C. 3711, 28 U.S.C. 3001, 3002(1).
Regulatory	31 CFR Part 904, Federal Claims Collection Standards.
Guidance	Department of the Treasury/FMS ''Litigation Referral Process Handbook,'' and ''Managing Federal Receivables,'' Appendix 8.

Agencies, including Treasury/FMS or Treasury-designated debt collection centers, shall refer delinquent accounts to the Department of Justice, or use other litigation authority that may be available, as soon as there is sufficient reason to conclude that full or partial recovery of the debt can best be achieved through litigation. Referrals to Justice should be made in accordance with the Federal Claims Collection Standards. If the debtor does not come forward with a voluntary payment after the claim has been referred for litigation, a lawsuit shall be initiated promptly.

1. In consultation with the Department of Justice, agencies shall establish a system to account for: (a) Claims referred to Justice, and (b) claims closed by Justice and returned to the respective agencies.

2. Agencies shall accelerate claim referrals to the Department of Justice in those districts where the Department of Justice contracts with private law firms for debt collection.

3. Agencies shall stop the use of any collection activities including TOP and refrain from further contact with the debtor once a claim has been referred to the Department of Justice, unless the Department of Justice agrees to allow the debtor(s) to remain in TOP for offset while they pursue other legal remedies.

4. Agencies shall promptly notify the Department of Justice of any payments received on a debtor's account after referral of the claim for litigation.

5. The Department of Justice shall account to agencies for monies or property collected on claims referred by the agencies.

B. Referral for Approval of Compromise Offer

REFERENCES

Statutory	31 U.S.C. 3711.
Regulatory	31 CFR Part 902, Federal Claims Collection Standards.
Guidance	Treasury/FMS' ''Managing Federal Receivables''.

Agencies may compromise a debt within their jurisdiction when the principal balance of the debt is less than $100,000 (or any higher amount authorized by the U.S. Attorney General). Unless otherwise provided by law, when the principal balance of the debt is greater than $100,000 (or any higher amount authorized by the U.S. Attorney General), the compromise authority rests with the Department of Justice. 31 CFR Part 902.

C. Referral for Approval to Terminate Collection Activity

REFERENCES

Statutory	31 U.S.C. 3711.
Regulatory	31 CFR Part 902, Federal Claims Collection Standards.
Guidance	Treasury/FMS' ''Managing Federal Receivables''.

Agencies may terminate collection on a debt within their jurisdiction when the principal balance of the debt is less than $100,000 (or any higher amount authorized by the U.S. Attorney General). Unless otherwise provided by law, when the principal balance of the debt is greater than $100,000 (or any higher amount authorized by the U.S. Attorney General), the authority to terminate rests with the Department of Justice. (See 31 CFR Part 902.)

4. Interest, Penalties and Administrative Costs

REFERENCES

Statutory	31 U.S.C. 3717.
Regulatory	Federal Claims Collection Standards, 31 CFR 901.9.
Guidance	Treasury's ''Managing Federal Receivables,'' Chapter 4.

Interest, penalties and administrative costs should be added to all debts unless a specific statute, regulation, loan agreement, contract, or court order prohibits such charges or sets criteria for their assessment. Agencies shall assess late payment interest on delinquent debts. Further, agencies shall assess a penalty charge of not more than six percent (6%) per year for failure to pay a debt more than ninety (90) days past due, unless a statute, regulation required by statute, loan agreement, or contract prohibits charging interest or assessing charges or explicitly fixes the interest rate or charges. (See 31 U.S.C. 3717 (e) and (g)). A debt is delinquent when the scheduled payment is not paid in full by the payment due date contained in the initial demand letter or by the date specified in the applicable agreement or instrument. Agencies shall assess administrative costs to cover the cost of processing and handling delinquent debt. Agencies must adjust the interest rate on delinquent debt to conform with the rate established by a U.S. Court when a judgment has been obtained.

5. Termination of Collection, Write-Off, Use of Currently Not Collectible (CNC), and Close-Out

REFERENCES

Statutory	31 U.S.C. 3711; 26 CFR 1.6050P–0, 26 CFR 1.6050P–1.
Regulatory	31 CFR Part 903 Federal Claims Collection Standards, 26 CFR 1.6050P–1.
Guidance	FCPWG Final Report on Write-off Policy, Dated 12/15/98, Treasury/FMS ''Managing Federal Receivables''.

All debt must be adequately reserved for in the allowance account. All write-offs must be made through the allowance account. Under no circumstances are debts to be written off directly to expense. Generally, write-off is mandatory for delinquent debt older than two years unless documented and justified to OMB in consultation with Treasury. Once the debt is written-off, the agency must either classify the debt as currently not collectible (CNC) or close-out the debt. Cost effective collection efforts should continue, specifically, if an agency determines that continued collection efforts after mandatory write-off are likely to yield higher returns. In such cases the written-off debt is not closed out but classified as CNC. The collection process continues until the agency determines it is no longer cost effective to pursue collection. At that point, the debt should be closed-out.

Under no circumstances should internal controls be compromised by the write-off or reclassification of debt. Very small percentages of debt older than two years can frequently result in amounts that, while immaterial to the overall debt and write-off balances, are large enough to pose a risk of fraud and abuse. If collection efforts are on-going then adequate internal controls must be maintained.

In those cases where material collections can be documented to occur after two years, debt cannot be written off until the estimated collections become immaterial.

During the period debts are classified as CNC, agencies should maintain the debt for administrative offset and other collection tools, as described in the FCCS until: (1) The debt is paid; (2) the debt is closed out; or (3) all collection actions are legally precluded; or (4) the debt is sold, whichever occurs first. When an agency closes out a debt, the agency must file a Form 1099C with the Internal Revenue Service (IRS) and notifiy the debtor in accordance with the Internal Revenue Code 26 U.S.C. 6050P and IRS regulations 26 CFR 1.6050P–1. The 1099C reports the uncollectible debt as income to the debtor which may be taxable at the debtor's current tax rate. Reporting the discharge of indebtedness to the IRS results in a potential benefit to the Federal Government, because any payments made to the IRS augment government receipts. Agencies should report closed-out debts on the Treasury Report on Receivables Due from the Public (TROR). Agencies must stop all collection activity, including the sale of debts, once debts are closed out. Agencies must not close out debts which have been sold or are scheduled to be sold.

Note: ''Termination'' and ''suspension of collection'' are legal procedures, which are separate and distinct from the accounting procedure of ''write-off.'' Agencies shall consult the Federal Claims Collection Standards, Part 903 for requirements which must be met prior to terminating or suspending collection. (See the attached Write-off/Close-out Process Flowchart for Receivables.)

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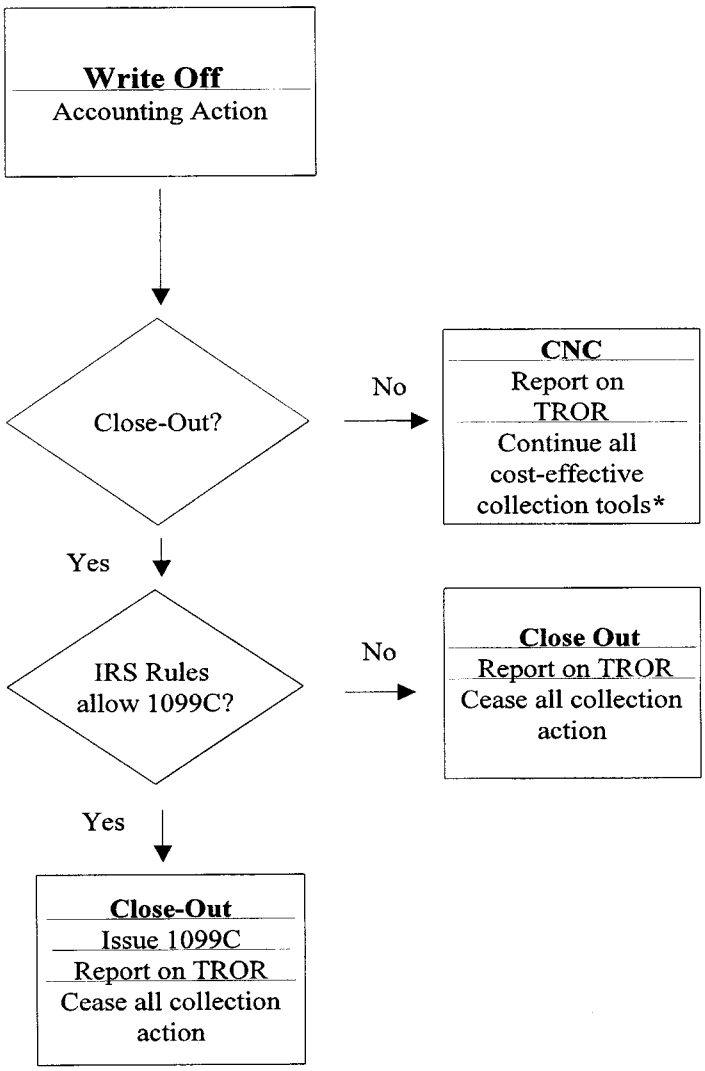
APPENDIX A to CIRCULAR NO. A-129

ATTACHMENT

Write-off occurs when the agency determines that the likelihood of collection is less than 50%, but no later than two years from the date of delinquency.



* Debt collection tools are described in Appendix A, Section V of this Circular. Agencies should use all tools, as appropriate, prior to and after the debt is written off.

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Appendix B to OMB Circular A–129

Checklist for Credit Program Legislation, Testimony, and Budget Submissions

The following checklist provides guidelines to be followed in reviewing credit program legislation, testimony, and budget submissions.

The checklist is to be used by agencies and OMB in proposing legislation, reviewing credit proposals, and preparing testimony on credit activities. If the proposed provisions or language are not in conformity with the policies of this Circular as listed in these checklists, agencies will be required to request in writing that the Office of Management and Budget modify or waive the requirement. Waiver request forms are available from OMB for this purpose. Such requests will identify the modification(s) or waiver(s) requested, and also will state the reasons for the request and the time period for which the exception is required. Exceptions, when allowed, will ordinarily be granted only for a limited time, in order to allow for continuing review by OMB.

Agencies are to use the checklist in the budget submission process for the evaluation of existing legislation, regulations, or program policies. The OMB program examiner with primary responsibility for the credit account will determine the use of this checklist. Use of the list includes review of changes in financial markets and the status of borrowers and beneficiaries to ensure that Federal objectives require continuation of the credit program. If these policies are found to be not in conformity with the policies of this Circular, agencies will propose changes to correct the inconsistency in their annual budget submission and justification to OMB and the Congress. When an agency does not deem a change in existing legislation, regulations, or policies to be desirable, it will provide a justification for retaining the existing non-conforming legislation or policies in its budget submission to OMB at the request of the budget examiner.

Checklist—Federal credit program justification should include the following elements:

1. Program title:
2. Form of Assistance (direct or guarantee):

3. Federal objectives of this program: (II.1.a.).

4. Reasons why Federal credit assistance is the best means to achieve these objectives: (II.1.a.).

5. Any draft bill establishing a credit program should contain the following:

Authorization to extend direct loans or make loan guarantees subject to the requirements of the Federal Credit Reform Act of 1990, as amended.

Authorization and requirement for a subsidy appropriation.

Cap on volume of obligations or commitments. (II.3.e.)

Terms and conditions defined sufficiently and precisely enough to estimate subsidy rate. (State estimated subsidy of this program (rate and dollar amount).) (II.1.e.)

Authorization of administrative expenses.

6. Describe briefly the existing and potential private sources of credit (and type of institution): (I.1.a.(2)(a)).

7. Explain reasons why private sources of financing and their terms and conditions must be supplemented and subsidized, including:

- To correct a defined capital market imperfection;
- To subsidize identified borrowers or other beneficiaries; and/or
- To encourage certain specified activities. (II.1.a.(1)).

8. State reasons why a federal credit subsidy is the most efficient way of providing assistance, how it provides assistance in overcoming market imperfections, and how it assists the identified borrowers or beneficiaries or encourages the identified activities. (II.1.b.).

9. Summarize briefly the benefits expected from the program. Can the value of these benefits (or some of these benefits) be estimated in dollar terms? If so, state the estimate of their value. Further information on conducting cost-benefit analysis can be found in OMB Circular No. A–94. (II.1.c.).

10. Describe any elements of program design which encourage and supplement private lending activity, such that private lending is displaced to the smallest degree possible by agency programs. (II.1.d.).

11. Estimate the expected administrative (including origination, servicing, and collection) resource requirements and costs of the credit program (dollar amounts over next 5 fiscal years). (II.1.f.).

12. Prohibitions: (II.2.c.&d.).

Agencies will not guarantee federally tax-exempt obligations directly or indirectly.

Agencies will not subordinate direct loans to tax-exempt obligations and will provide that effective subordination of guaranteed loans to tax-exempt obligations will render the guarantee void.

Risk sharing: (II.3.a.).

- Lenders and borrowers share a substantial stake in full repayment according to the loan contract.
- Private lenders who extend Government guaranteed credit bear at least 20 percent of any potential losses.
- Borrowers deemed to pose less of a risk receive a lower guarantee as a percentage of the total loan amount.
- Borrowers have an equity interest in any asset being financed by the credit assistance.

Fees and interest rates: (II.3.b).

- Interest and fees are set at levels that minimize default and other subsidy costs.
- Interest rates charged to borrowers (or interest supplements) not set at an absolute level, but instead set by reference to the rate (yield) on benchmark Treasury.

Protecting the Government's interest:

- Contractual agreements include all covenants and restrictions (*e.g.,* liability insurance) necessary to protect the Federal Government's interest. (II.3.c.).
- Maturities on loans shorter than the estimated useful economic life of any assets financed. (II.3.c.(1)).
- The Government's claims on assets not subordinated to the claim of other lenders in the case of a borrower's default. (II.3.c.(2)).
- Loan contracts to be standardized and private sector documents used to the extent possible. (II.3.f.).

13. Describe the methods used to evaluate the program and the results of evaluations that have been made. (II.4.c.(1)).

Appendix C to OMB Circular A–129

Model Bill Language for Credit Programs

A Bill

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That, this Act may be cited as ‘‘ ’’.

Authorization

Sec. 2.(a) The Administrator is authorized to make or guarantee loans to * * * (Define eligible applicants).

(b) There are authorized to be appropriated $ for the cost of direct loans or loan guarantees authorized in subsection (1) and $ for administrative expenses for fiscal year and such sums as shall be necessary for each fiscal year thereafter. [The amounts authorized must be consistent with the amounts proposed in the President's budget for that fiscal year. Generally, a specific amount should be specified for the first fiscal year and sums for subsequent fiscal years (see OMB Circular No. A–19.)]

Within the resources and authority available, gross obligations for the principal amount of direct loans offered by the Administrator will not exceed $, or the amount specified in appropriations acts for fiscal year and such sums as shall be necessary for each fiscal year thereafter. Commitments to guarantee loans may be made by the Administrator only to the extent that the total loan principal, any part of which is guaranteed, will not exceed $, or the amount specified in appropriations acts for fiscal year and such sums as shall be necessary for each fiscal year thereafter.

Terms and Conditions

Sec. 3. Loans made or guaranteed under this Act will be on such terms and conditions as the Administrator may prescribe, except that:

(a) The Administrator will allow credit to any prospective borrower only when it is necessary to alleviate a credit market imperfection, or when it is necessary to achieve specified Federal objectives by providing a credit subsidy and a credit subsidy is the most efficient way to meet those objectives on a borrower-by-borrower basis.

(b) The final maturity of loans made or guaranteed within a period shall not exceed years, or percent of the useful life of any physical asset to be financed by the loan, whichever is less as determined by the Administrator.

(c) No loan guaranteed to any one borrower will exceed 80% of the loss on the loan. Borrowers who are deemed to pose less of a risk will receive a lower guarantee as a percentage of the loan amount.

(d) No loan made or guaranteed will be subordinated to another debt contracted by the borrower or to any other claims against the borrowers in the case of default.

(e) No loan will be guaranteed unless the Administrator determines that the lender is responsible and that adequate provision is made for servicing the loan on reasonable terms and protecting the financial interest of the United States.

(f) No loan will be guaranteed if the income from such loan is excluded from gross income for the purposes of Chapter 1 of the Internal Revenue Code of 1986, as amended, or if the guarantee provides significant collateral or security, as determined by the Administrator, for other obligations the income from which is so excluded.

(g) Direct loans and interest supplements on guaranteed loans will be at an interest rate that is set by reference to a benchmark interest rate (yield) on marketable Treasury securities with a similar maturity to the direct loans being made or the non-Federal loans being guaranteed. The minimum interest rate of these loans will be (at) (percent above) (no more than percent below) the interest rate of the benchmark financial instrument.

(h) The minimum interest rate of new loans will be adjusted every quarter (month(s)) (weeks) (days) to take account of changes in the interest rate of the benchmark financial instrument. (see

(i) Fees or premiums for loan guarantee or insurance coverage will be set at levels that minimize the cost to the Government (as defined in Section 502 of the Federal Credit Reform Act of 1990, as amended) of such coverage, while supporting achievement of the program's objectives. The minimum guarantee fee or insurance premium will be (at) (no more than percent below) the level sufficient to cover the agency's costs for paying all of the estimated costs to the Government of the expected default claims and other obligations. Loan guarantee fees will be reviewed every month(s) to ensure that the fees assessed on new loan guarantees are at a level sufficient to cover the referenced percentage of the agency's most recent estimates of its costs.

(j) Any guarantee will be conclusive evidence that said guarantee has been properly obtained; that the underlying loan qualified for such guarantee; and that, but for fraud or material misrepresentation by the holder, such guarantee will be presumed to be valid, legal, and enforceable.

(k) The Administrator will prescribe explicit standards for use in periodically assessing the credit risk of new and existing direct loans or guaranteed loans. The Administrator must find that there is a reasonable assurance of repayment before extending credit assistance.

(l) New direct loans may not be obligated and new loan guarantees may not be committed except to the extent that appropriations of budget authority to cover their costs are made in advance, as required in Section 504 of the Federal Credit Reform Act of 1990, as amended.

Payment of Losses

Sec. 4(a). If, as a result of a default by a borrower under a guaranteed loan, after the holder thereof has made such further collection efforts and instituted such enforcement proceedings as the Administrator may require, the Administrator determines that the holder has suffered a loss, the Administrator will pay to such holder percent of such loss, as specified in the guarantee contract. Upon making any such payment, the Administrator will be subrogated to all the rights of the recipient of the payment. The Administrator will be entitled to recover from the borrower the amount of any payments made pursuant to any guarantee entered into under this Act.

(b) The Attorney General will take such action as may be appropriate to enforce any right accruing to the United States as a result of the issuance of any guarantee under this Act.

(c) Nothing in this section will be construed to preclude any forbearance for the benefit of the borrower which may be agreed upon by the parties to the guaranteed loan and approved by the Administrator, provided that budget authority for any resulting subsidy costs as defined under the Federal Credit Reform Act of 1990, as amended, is available.

(d) Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Administrator will have the right in his discretion to complete, recondition, reconstruct, renovate, repair, maintain, operate, or sell any property acquired by him pursuant to the provisions of this Act.

[FR Doc. 00–29928 Filed 11–28–00; 8:45 am]

BILLING CODE 3110–01–P

Federal Register

Wednesday,
November 29, 2000

Part IV

Department of Housing and Urban Development

Notice of Funding Availability for the Community Development Work Study Program; Fiscal Year 2001; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4631–N–01]

Notice of Funding Availability for the Community Development Work Study Program; Fiscal Year 2001

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: This NOFA announces the availability of approximately $3.0 million for the Community Development Work Study Program (CDWSP).

Purpose of the Program: To provide assistance to economically disadvantaged and minority graduate students who participate in community development work study programs and are enrolled full-time in a graduate community building academic degree program.

Available Funds: Approximately $3 million from FY 2001 appropriations (plus any additional funds recaptured from prior appropriations).

Eligible Applicants: Institutions of higher education, area-wide planning organizations (APOs), and States.

Application Deadline: February 2, 2001.

Matching Requirements: None.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2528–0175. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Application Due Date, Application Kits, and Technical Assistance

Application Due Date: Your completed application must be received at the address listed below on February 2, 2001, based on the following submission requirements.

Application Procedures: Mailed Applications. Your application will be considered as filed on time if it is postmarked on or before 12:00 midnight on the application due date and received at the designated address below on or within ten (10) days of the application due date.

Applications Sent by Overnight/ Express Mail Delivery. If your application is sent by overnight or express mail, it will be considered as filed on time if it is received on or before the application due date, or if you submit documentary evidence that the application was placed in transit with the overnight delivery service by no later than the specified application due date.

Hand Carried Applications. If you hand carry your application on or before the application due date, it must be brought to the specified location and room number between the hours of 8:45 am and 5:15 pm, Eastern Standard Time. If you hand carry your application on the application due date, it will be accepted in the South Lobby of the HUD Headquarters Building at the above address from 5:15 pm to the 12:00 midnight, Eastern Standard Time.

Address for Submitting Applications: Your completed applications (one original and two copies) must be submitted to: Processing and Control Branch, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7251, Washington, DC 20410. When submitting your application, you should include your name, mailing address (including zip code) and telephone number (including area code).

For Application Kits, Further Information, and Technical Assistance:

For Application Kits: You may obtain an application kit by calling HUD USER at 1–800–245–2691. If you have a hearing or speech impairment, you may call the following TTY number: 1–800–483–2209. You may also access the application kit on the Internet from HUD's web site at www.hud.gov. When requesting an application, you should refer to CDWSP and include your name, mailing address (including zip code) and telephone number (including area code).

For Further Information and Technical Assistance: Jane Karadbil, Office of University Partnerships at (202) 708–1537, ext. 5918. Hearing-or speech-impaired individuals may call HUD's TTY number (202) 708–0770, or the Federal Information Relay Service at 1–800–877–8339. Other than the ''800'' number, these numbers are not toll-free. Ms. Karadbil can also be reached via the Internet at: Jane__R.__Karadbil@hud.gov.

II. Amount Allocated

Up to $3 million, plus any additional funds recaptured from prior appropriations.

III. Program Description; Eligible Applicants; Eligible Activities and Costs

(A) Program Description

CDWSP funds two-year grants to institutions of higher education, area-wide planning organizations, and States to provide assistance to economically disadvantaged and minority graduate students who participate in a community development work study program and are enrolled full-time in a graduate community building academic degree program. Grants will cover the academic period August 2001 through August 2003.

(B) Eligible Applicants

You must demonstrate that you are eligible to apply for the program. You are an eligible applicant if (a) you are an institution of higher education offering graduate degrees in a community development academic program, (b) an Area-wide Planning Organization (APO) applying on behalf of two or more eligible institutions of higher education located in the same SMSA or non-SMSA as the APO (as a result of a final rule for the program published at 24 CFR 570.415, institutions of higher education are permitted to choose whether to apply independently or through an APO); or (c) a State applying on behalf of two or more eligible institutions of higher education located in the State. If a State is approved for funding, institutions of higher education located in the State are not eligible recipients.

(C) Eligible Activities and Costs

You may request no more than $15,000 per year per student, for a total of two years. The total is broken down as follows: An administrative allowance of $1,000 per student per year; a work stipend of no more than $9,000 per student per year; and tuition, fees, and additional support of no more than $5,000 per student per year.

IV. Program Requirements

(A) Statutory Requirements

You must comply with all statutory and regulatory requirements applicable to this program. CDWSP regulations can be found at 24 CFR part 570.415. Copies of the regulations are available on request from HUD User.

(B) Eligibility of the Degree Program

An eligible community building academic degree program includes but is not limited to graduate degree programs in community and economic development, community planning, community management, public administration, public policy, urban economics, urban management, and

urban planning. The term excludes social and humanistic fields such as law, economics (except for urban economics), education, sociology, social work, business administration, and history. The term also excludes joint degree programs except where both joint degree fields have the purpose and focus of educating students in community building.

You are encouraged to contact Jane Karadbil at the above listed telephone number if you have any questions about eligibility of a proposed degree program.

(C) Affirmatively Furthering Fair Housing

You are not required to respond to HUD's affirmatively furthering fair housing requirements.

V. Application Selection Process

(A) Two Types of Reviews

Two types of reviews will be conducted—a threshold review to determine applicant eligibility and a rating based on the selection criteria for all applications that pass the threshold review.

(B) Threshold Criteria for Funding Consideration

(1) *General threshold requirements.* You must meet the following threshold requirement before an application can be evaluated, rated, and ranked:

(a) *Eligibility.* You must be eligible to apply for the program.

(b) *Compliance with nondiscrimination requirements.* You must comply with all Fair Housing Act and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). If you: (i) Have been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination; (ii) are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (iii) have received a letter of noncompliance findings under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, or section 109 of the Housing and Community Development Act, you are not eligible to apply for funding under this NOFA until you have resolved such charge, lawsuit, or letter of findings to the satisfaction of the Department.

(c) *Number of students to be assisted.* You may request funding for as many as five students, and in no case, for no less than three students, since work plan and other facets of the evaluation are assessed in the context of the number of students for whom funding is requested. If your application requests fewer than three or more than five students per institution, it will be disqualified.

(d) *Eligibility of the applicant and its proposed academic degree program.* You must demonstrate that you are eligible to participate in the program, by demonstrating that you are either an institution of higher education that offers graduate degrees in at least one eligible community building academic program or you are an APO or State submitting an application on behalf of such institutions. Your application must also demonstrate that each institution participating in your program has the faculty to carry out its activities under your program. Each work placement agency must be involved in community building and must be an agency of a State or unit of local government, an area-wide planning organization, an Indian tribe, or a private nonprofit organization.

(e) *Graduation rates.* If you were funded during the FY 1998 round, you must maintain at least a 50 percent rate of graduation of students from this round, which covered school years August 1998 to August 2000, in order to be eligible to participate in the current round of CDWSP funding. If you were funded under the FY 1998 CDWSP funding round and did not maintain such a rate, you will be excluded from participating in the FY 2001 funding round.

(C) Factors for Award Used To Evaluate and Rate Applications

To review and rate applications, the Department may establish panels including persons not currently employed by HUD to obtain certain expertise and outside points of view, including views from other Federal agencies. You will be evaluated competitively and ranked against all other applicants that have applied for the same funding program.

(D) General Factors for Award Used To Evaluate and Rank Applications

The factors for rating and ranking your application, and maximum points for each factor, are provided below. The maximum number of points for each program is 100. The rating of your organization and staff, unless otherwise specified, will include any sub-contractors, consultants, sub-recipients, and members of consortia that are firmly committed to your project, to the extent of their participation.

(1) *Quality of the Academic Program* (30 points if you have never received a CDWSP grant) (25 points if you have previously received a CDWSP grant).

HUD will evaluate the quality of the academic program you offer (or in the case of an application from an APO or State, those offered by the institutions included in your application) including, without limitation, the:

(i) Quality of your course offerings in terms of their depth, sophistication, quality, and emphasis on applied coursework;

(ii) Appropriateness of your course offerings for preparing students for careers in community building; and

(iii) Qualifications of your faculty and percentage of their time devoted to teaching and research in community building.

(2) *Quality of the Work Placement Assignments* (15 points).

HUD will evaluate the extent to which participating students will receive a sufficient number and variety of work placement assignments, the assignments will provide practical and useful experience to students participating in your program, and the assignments will further the participating students' preparation for professional careers in community building. In applying this factor, HUD will consider the quality in terms of relevance to community building and variety of work placement agencies and the quality and variety of projects/experiences at each agency and overall. You must have a plan for rotating students among work placement agencies. In order to receive full points on this factor, you must propose at least three different work placement experiences (typically, one each school year and one during the summer between the two school years.) Students engaging in community building projects *through* an institution of higher education (rather than through local work placement sites) may do so only through a community outreach center, which will in that instance be considered a work placement agency even if the community building projects are undertaken with or through a separate organization or entity. Accordingly, students engaging in community building through an institution of higher education's outreach center should do so during only part of their academic program and should rotate to other work placement agency responsibilities identified in the CDWSP regulations. Full points will be awarded to institutions that have included executed agreements with their proposed work study sites, rather than just listing these sites.

(3) *Effectiveness of Program Administration* (18 points).

HUD will evaluate the degree to which you will be able to coordinate and administer your program. HUD will

allocate the maximum points available under this criterion equally among the following three considerations, except that the maximum points available under this criterion will be allocated equally only between (i) and (ii), where you have not previously administered a CDWSP-funded program. If you received a CDWSP grant in FY 1997 or before and have not received one since then, you are considered a new applicant, for purposes of this factor.

(i) The strength and clarity of your plan for placing CDWSP students on rotating work placement assignments and for monitoring CDWSP students' progress both academically and in their work placement assignments;

(ii) The degree to which the individual who will coordinate and administer your program has clear responsibility, ample available time, and sufficient authority to do so;

(iii) The effectiveness of your prior coordination and administration of a CDWSP-funded program, where applicable (including the timeliness and completeness of your compliance with CDWSP reporting requirements). In addressing the timeliness of reports, you should review your prior CDWSP grant agreements and reports and compare when reports were due with when the reports actually were submitted. A chart of your report submissions for each grant by submission time should be included. You should also describe your timeliness in drawing down grant funds.

(4) *Demonstrated Commitment of the Applicant to Meeting the Needs of Economically Disadvantaged and Minority Students* (10 points).

HUD will evaluate your commitment to meeting the needs of economically disadvantaged and minority students as demonstrated by your policies and plans, and past efforts and successes in, recruiting, enrolling and financially assisting economically disadvantaged and minority students, including the provision of reasonable accommodations for students with disabilities. If you are an APO or State, HUD will consider the demonstrated commitment of each institution of higher education on whose behalf you are applying; HUD will also consider your demonstrated commitment to recruit and hire economically disadvantaged and minority students.

(5) *Rates of Graduation* (7 points).

HUD will evaluate the rates of students previously enrolled in a community building academic degree program, specifically (where applicable) graduation rates from any previously funded CDWSP academic programs or similar programs. This factor measures the rate of graduation for all applicable years and awards points based on the extent to which the applicant exceeds a 50% graduation rate each applicable year.

(6) *Extent of Financial Commitment* (10 points).

HUD will evaluate your commitment and ability to assure that CDWSP students will receive sufficient financial assistance above and beyond the CDWSP funding to complete their academic program in a timely manner and without working in excess of 20 hours a week during the school year. When addressing this issue, you should, among other responsive information, delineate the full costs budgeted annually for a student (including living expenses, fees, etc), explain the basis for your budget and explain how the financial assistance package you will offer to each CDWSP student will meet that budget. You should have an adequate means of addressing reasonable variations in budget needs among students and for addressing emergency financial needs of students.

(7) *Likelihood of Fostering Students' Permanent Employment in Community Building* (10 points if you have never received a CDWSP grant) (15 points if you have previously received a CDWSP grant).

HUD will evaluate the extent to which your proposed program will lead participating students directly and immediately to permanent employment in community building, as indicated by:

(i) Your past success in placing your graduates (particularly CDWSP-funded and similar program graduates, where applicable) in permanent employment in community building; and

(ii) The amount of faculty/staff time and resources you devote to assisting students (particularly students in CDWSP-funded and similar programs, where applicable) in finding permanent employment in community building.

VI. Application Submission Requirements

(A) Content of Application

Your application should include an original and two copies of the items listed below. In order to be able to recycle paper, you should not submit applications in bound form; binder clips or loose leaf binders are acceptable. Also, please do not use colored paper.

(1) Transmittal Letter, which must be signed by your Chief Executive Officer, or his or her designee. If a designee signs, your application must contain a copy of the official delegation of signatory authority. The letter must contain an assurance that you were not awarded a CDWSP grant in Fiscal Year 1998 (which was to cover the school years August 1998 to August 2000) or were awarded a Fiscal Year 1998 grant and had a 50 percent or higher rate of graduation of CDWSP students funded through the grant.

(2) Designation of your degree program(s) under which students will be educated.

(3) Executive Summary.

(4) Narrative statement addressing the Factors for Award in Section V. No attachments are permitted.

(5) Management/Work Plan.

(6) Recipient/Student Binding Agreement. HUD does not provide a model or sample format for this document.

(7) Recipient/Work Placement Agreement. HUD does not provide a model or sample format for this document. If you include executed agreements with your application, they belong here.

(8) Budget. Using the forms provided for the August 2001 through August 2003 funding period.

(9) Application for Federal Assistance (HUD–424).

(10) Standard Form for Assurances—Non-Construction Programs (SF–424B).

(11) Drug-Free Workplace Certification (HUD–50070).

(12) Certification of Payments to Influence Transactions (Form HUD–50071).

(13) Applicant/Recipient Disclosure Update Report (HUD–2880).

(14) Assurance regarding the applicant's financial management systems.

(B) Final Selection

If your application passes the threshold requirements, it will be rated and then ranked based on its total score on the selection factors. Your application will be considered for selection based on its rank order. HUD may make awards out of rank order to achieve geographic diversity, and may provide assistance to support a number of students that is less than the number requested under your application or a lower funding level per student, in order to provide assistance to as many highly ranked applications as possible.

If there is a tie in the point scores of two applications, the rank order will be determined by the scores on the selection factor entitled ''Quality of the Academic Program.'' The application with the most points on this factor will be given the higher rank. If there is still a tie, the rank order will be determined by the applicants' scores on the selection factor entitled ''Effectiveness of program administration.'' The application with the most points for this

selection factor will be given the higher rank.

If there are insufficient funds to fund an application, even if the request is reduced to the minimum number of students which could be funded (i.e., three students per institution of higher education), HUD may select the next ranked application which would not exceed the funding left available and still fund the minimum number of students allowed.

HUD reserves the right to make selections out of rank order to provide for geographic distribution of funded CDWSPs. If HUD decides to use this option, it will do so only if two adjacent HUD (Hubs) (formerly referred to as regions) do not yield at least one fundable CDWSP on the basis of rank order. If this occurs, HUD will fund the highest ranking applicant within the two Hubs.

HUD reserves the right to reduce your amount of funding in order to fund as many highly ranked applications as possible. Additionally, if funds remain after funding the highest ranked application, HUD may fund part of the next highest ranking application (as long as it would provide assistance to the minimum number of students required to be served) in a given program area. If you turn down the award offer, HUD will make the same determination for the next highest-ranking application. If funds remain after all selections have been made, the remaining will be carried over to the next funding cycle's competition.

(C) Negotiations

After selections have been made, HUD may require winners to participate in negotiations to determine the Grant Budget. In cases where HUD cannot successfully conclude negotiations, or you fail to provide HUD with requested information, an award will not be made. In such instances, HUD may elect to offer an award to the next highest ranking applicant, and proceed with negotiations with the next highest applicant.

VII. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information you, the applicant, may want to provide. HUD may contact you, however, to clarify an item in your application or to correct technical deficiencies. You should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of your response to any selection factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may, however, contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. Examples of curable (correctable) technical deficiencies include your failure to submit the proper certifications or your failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by return receipt requested. You must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 14 calendar days of the date of receipt of the HUD notification. If your deficiency is not corrected within this time period, HUD will reject your application as incomplete, and it will not be considered for funding.

VIII. Environmental Requirements

This NOFA does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321) and no Finding of No Significant Impact is needed. In addition, the provision of assistance under this NOFA is categorically excluded from environmental review under § 50.19(b)(3) and (b)(9).

IX. Other Matters

(A) Federalism, Executive Order 13132

This notice does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132 (entitled ''Federalism'').

(B) Prohibition Against Lobbying Activities

Applicants for funding under this NOFA (except Indian Housing Authorities established by tribal governments exercising their sovereign powers with respect to expenditures specifically permitted by Federal law) are subject to the provision of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995, Public Law 104–65 (December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal Executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF–LLL disclosing such payments must be submitted. The certification and the SF–LLL are included in the application kit.

The Lobbying Disclosure Act of 1995, Public Law 104–65 (December 19, 1995), which repealed section 112 of the HUD Reform Act and resulted in elimination of the regulations at 24 CFR part 86, requires all persons and entities who lobby covered Executive or Legislative Branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

(C) Section 102 of the HUD Reform Act; Documentation and Public Access Requirements

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published, at 57 FR 1942, a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to

indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

(2) *Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(D) Section 103 of the HUD Reform Act

HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics-related questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact HUD's Ethics Law Division (202) 708–3815 (voice), (202) 708–1112 (TTY). (These are not toll-free numbers.) For HUD employees who have specific program questions, the employee should contact the appropriate Field Office Counsel or Headquarters Counsel for the program to which the question pertains.

(E) Catalog of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance number is: 14.234.

X. Authority

Section 107(c) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*) authorizes CDWSP. Regulations for the program appear at 24 CFR 570.415.

Dated: November 22, 2000.

Susan M. Wachter,

Assistant Secretary for Policy Development and Research.

[FR Doc. 00–30417 Filed 11–28–00; 8:45 am]

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Vehicles originally manufactured for sale in Canada; importation expedited; comments due by 12-4-00; published 11-20-00

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 2346/P.L. 106–521
To authorize the enforcement by State and local governments of certain Federal Communications Commission regulations regarding use of citizens band radio equipment. (Nov. 22, 2000; 114 Stat. 2438)

H.R. 5633/P.L. 106–522
District of Columbia Appropriations Act, 2001 (Nov. 22, 2000; 114 Stat. 2440)

S. 768/P.L. 106–523
Military Extraterritorial Jurisdiction Act of 2000 (Nov. 22, 2000; 114 Stat. 2488)

S. 1670/P.L. 106–524
To revise the boundary of Fort Matanzas National Monument, and for other purposes. (Nov. 22, 2000; 114 Stat. 2493)

S. 1880/P.L. 106–525
Minority Health and Health Disparities Research and Education Act of 2000 (Nov. 22, 2000; 114 Stat. 2495)

S. 1936/P.L. 106–526
Bend Pine Nursery Land Conveyance Act (Nov. 22, 2000; 114 Stat. 2512)

S. 2020/P.L. 106–527
To adjust the boundary of the Natchez Trace Parkway, Mississippi, and for other purposes. (Nov. 22, 2000; 114 Stat. 2515)

S. 2440/P.L. 106–528
Airport Security Improvement Act of 2000 (Nov. 22, 2000; 114 Stat. 2517)

S. 2485/P.L. 106–529
Saint Croix Island Heritage Act (Nov. 22, 2000; 114 Stat. 2524)

S. 2547/P.L. 106–530
Great Sand Dunes National Park and Preserve Act of 2000 (Nov. 22, 2000; 114 Stat. 2527)

S. 2712/P.L. 106–531
Reports Consolidation Act of 2000 (Nov. 22, 2000; 114 Stat. 2537)

S. 2773/P.L. 106–532
Dairy Market Enhancement Act of 2000 (Nov. 22, 2000; 114 Stat. 2541)

S. 2789/P.L. 106–533
To amend the Congressional Award Act to establish a Congressional Recognition for Excellence in Arts Education Board. (Nov. 22, 2000; 114 Stat. 2545)

S. 3164/P.L. 106–534
Protecting Seniors From Fraud Act (Nov. 22, 2000; 114 Stat. 2555)

S. 3194/P.L. 106–535
To designate the facility of the United States Postal Service located at 431 North George Street in Millersville, Pennsylvania, as the ''Robert S. Walker Post Office''. (Nov. 22, 2000; 114 Stat. 2559)

S. 3239/P.L. 106–536
To amend the Immigration and Nationality Act to provide special immigrant status for certain United States international broadcasting employees. (Nov. 22, 2000; 114 Stat. 2560)

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